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FORENSIC ELOQUENCE.

SKETCHES

OF

TRIALS IN IRELAND

FOR HIGH TREASON, ETC.

INCLUDING

The Speeches of Mr. Curran

AT LENGTH:

ACCOMPANIED BY CERTAIN PAPERS

ILLUSTRATING THE HISTORY AND PRESENT STATE OF THAT COUNTRY.

CEDENT ARMA TOGÆ, CONCEDAT LAUREA LINGUÆ.

NOSCE HÆC OMNIA SALUS EST ADOLESCENTULIS.

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PREFACE

BY

THE EDITOR.

IN bringing this Collection before the Public, the Editor flatters himself with believing, that he does an acceptable service. Every man in these States, in some degree, is interested in the history of ENGLAND, that important portion of the globe. It is necessary, therefore, to be acquainted with whatever developes her conduct and character, whether of a political or a commercial nature—to observe, with a watchful eye, the proceedings of that wonderful nation, whose wealth and enterprize, power and ambition, are either the admiration or the terror of the world.

To the Citizens of AMERICA, this volume will afford much information — It will be useful to a people just rising into manhood, who are fitting themselves, upon new principles, to appear with dignity amongst the nations of the earth. There is not a man who can read, and think, but who, from the perusal of these pages, may draw a lesson, either to avoid moral evil, or shun political guilt.—These Trials, however, are not brought for-

forward to serve as precedents to the people of America, but as warnings to them—God forbid, that these countries should ever be cursed with State plots, State persecutions, and State spies and informers.

To the Gentlemen of the Bar, this book must be a valuable acquisition—it is a combination of law knowledge and historical facts. Besides making them acquainted with the criminal jurisprudence of another country, it will lay open to their study and imitation, the productions of a man who is thought to excell all his cotemporaries in the powers of forensic eloquence——a genius of a superior cast, who, in the skilful management of all the beauties and energies of the English language, delivers his opinions

"In thoughts that breathe, and words that burn."

From this book the Politician may learn, in the history of unfortunate IRELAND, the disastrous consequences of a bad system of government, and how to appreciate the blessings of a good one. It will shew him the fatal effects of the abuse of power, of commercial restraints, and of religious oppression—To him in particular, who wishes to exhibit his talents in the Senate, from the choicest flowers of oratory, he may learn the soundest maxims of morality, and the purest principles of political justice.

To Clerical men, also, it is presumed, this book may have its uses—Without calling their attention to *The History of the Church*, from the example of *Ireland*, alone, both Churchmen and Statesmen may know, that compulsion is not conversion—that neither fire nor faggot, the gibbet nor the bayonet, nor penal statutes, are right methods of reclaiming men from error. They may now have learned, that every Sect, when legalized,

is

is inclined to domineer; and that almost every Sect, in its turn, when in power, has persecuted—That the better way is, to leave the Catholic and the Presbyterian, the Churchman and the Dissenter, each to his own opinions—That "peace and good will to men" is the essence of all Divinity; and that brotherly love and universal charity, are the best tests of true Religion.*

To the pure, unsophisticated Moralist—he who can soar above local prejudices; who can extend his thoughts beyond the narrow circle in which he happens to move; whose motives are influenced by Religion, and whose actions are guided by Honour—this book will bring him neither joy nor comfort—it gives a dark and ugly view of human nature—a melancholy representation of Violence wielding the sword of Justice, and Ambition assuming the mantle of Religion; of Vice exalted, and Virtue depressed; of Power trampling upon weakness, of public wrongs and private sufferings. —— When the man of feeling reads these pages, and casts his eye over *The History of Nations;* when he views the sad picture of folly and of crimes, of fraud and usurpation; when he observes the mass of evil, which, under the name of *Government*, for nearly six thousand years, has oppressed, enslaved, and degraded by far the greatest portion of mankind—with a sigh, he will wonder at the vast extent and duration of human misery, and almost doubt the being and goodness of a Deity! †

* "The substance of religious service, is *social service*—Benevolence to Man, is *the Beauty of Holiness.*"——See the liberal, the eloquent, and the argumentative Sermons of J. FAWCET.

† The Reader will perceive, that the Writer points to a *general* view of the history of the OLD world—He flatters himself with hoping, that the governments of the NEW world will present a more pleasing theme to future Historians.

When the idea of this work was first suggested, it was contemplated to print only the speeches of Mr. CURRAN — upon more mature consideration, the Editor saw it necessary to go further, and to publish the trials in which the speeches occurred—But, as the examination, at length, of a great number of witnesses would have swelled the volume to an immoderate size and price, and would have been uninteresting at this distance from the scene of action, it has been thought adviseable to abridge them. Each trial forms a separate history and catastrophe of itself; care has been taken to retain every essential point and circumstance bearing on the charge or accusation; and from the insertion of every necessary document, it will be seen, that an impartial statement of each case has been given, from which, every man, of whatever party or country, will be able to judge of its merits or demerits.

☞ The Abridgements, and other Law articles, were digested and methodized by a professional Gentleman.

DISTRICT OF MARYLAND.

TO WIT.

BE IT REMEMBERED, That on the twenty-sixth Day of July, in the twenty-ninth Year of the Independence of the UNITED STATES *of* AMERICA, *GEORGE DOUGLAS of the said District hath deposited in this Office the Title of a Book, the Right whereof he claims as Proprietor, in the Words following, to wit:—*

"*FORENSIC ELOQUENCE* — SKETCHES of TRIALS in IRE-
" LAND for High Treason, &c. including the SPEECHES
" of Mr. CURRAN at length, &c."

—In Conformity to the Act of the Congress of the United States entituled, "An Act for the Encouragement of Learning, by securing the Copies of Maps, Charts, and Books to the Authors or Proprietors of such Copies during the Times therein mentioned."

Philip Moore, Clerk.

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A

BRIEF SKETCH

OF THE

HISTORY of IRELAND.

IRELAND is an island in the Atlantic ocean, situated between the 5th and 10th degrees of West longitude, and the 51st and 56th North latitude—in length it is about 300 miles, with a medial breadth of 150 miles, giving an area of nearly 27,500 miles.

The name IRELAND is said to be derived from the word *Eir*, in the Celtic language signifying West; whence the names *Ierna*, *Iverna*, *Hibernia*, and *Ireland*. In poetical descriptions, it is sometimes called the *Green*, or *Emerald Isle*.

Much difference of opinion has arisen concerning the peopling of this island.* The Irish writers strenuously assert, that the first inhabitants came from Spain, under a leader of the name of *Golam Milea Espaine*, i. e. Golam the Hero of Spain; hence the native Irish are called *Milesians*—But the British writers contend, that Ireland was first peopled either from Wales or Scotland. The latter idea seems to be the most probable, as the language of the Scotch Highlanders and the native Irish are radically and essentially the same.

In

* Some of the Iriſh writers carry their ideas of antiquity very far back indeed; ſome to the Flood, and others to the Creation—But this is not ſingular—The Chineſe date their origin ſome thouſands of years before the Creation.

In such a sketch as this, it would be improper to enter into all the fabulous accounts of the Irish Bards and Poets, the only historians of those dark and barbarous ages.—One thing, however, is certain, that the Romans never got the length of Ireland; and that when the Empire was tumbled into ruins by the Gothic hordes, Ireland enjoyed a long peace; it became the refuge of the learned and virtuous, who fled from other countries to enjoy tranquility in that beautifully sequestered island.

We shall therefore pass over all the fabulous narrations, the contentions of the different septs or clans, and the wars of the provincial kings, and come at once to what appears to be founded in truth.*

The order of Priesthood had hitherto been in the hands of the Bards and Druids, and, like other Priests, they exercised an unbounded sway over the minds and actions of a rude and ignorant people—'till about the middle of the fifth century, when Christianity was introduced into Ireland by Patricius, by birth, it is said, a Scotchman.† For

* The obscurity of the early part of Irish history is not uncommon—All early histories are enveloped in fable and darkness—Hume says, that it is not till the time of Henry VII. that the history of England can be relied upon with certainty.

† Those who are fond of reading the Lives of the *Saints*, will find (if we believe Mr. Gibbon) that *Saint Patrick* was a *cleverer* man than *Saint George* the patron of England—the latter only killed a dragon, whilst the former not only cleared the island of all snakes and poisonous reptiles, but he converted the *wild* Irish to the true Catholic faith!—As the following account of this celebrated personage is the freest from legendary fiction, we lay it before our readers:—

Saint Patrick was born 5th April 373, of a good family at Kirk Patrick near Dumbarton; his baptismal name, *Succath*, signifies "valiant in war." On an invasion of the Irish, he was taken prisoner, and carried to Ireland, where he continued six years in the service of Milcho. During this time, he learnt the Irish language; at length he made his escape, and returned home. About two years after, in consequence of a dream, he conceived the design of converting the Irish. To qualify himself for this task, he travelled to the continent, where he continued thirty years studying under the direction of his maternal uncle, St. Martin, Bishop of Tours, who ordained him a Priest. Pope Celestine consecrated him a Bishop, and gave him the name *Patricius*, expressive of his honourable descent, and to give lustre and weight to the commission with which he was charged to convert the Irish.—Palladius had been in Ireland on the same design, and so had Kieran, Albe, and Declar, but with little success. The great office of Apostle of Ireland was reserved for Patrick, who landed at Wicklow A.D. 441. His first convert was Sinell, eighth in descent from Cormack King of Leinster; but not meeting with sufficient encouragement, he proceeded to Dublin, and from thence to Ulster, where he founded a church (afterwards the Abbey of Saul, in the county of Down). After labouring seven years in his great work, he returned to Britain, which he freed from the here-

For some time, the Bards endeavour'd to maintain their influence, but the principal King of the island, and some others of the great men, being converted to the true religion, and Saint Patrick establishing his ecclesiastical residence at *Ardmacha* (now Armagh) Christianity at length obtained the ascendency. *

The Christian religion, so excellent in its principles, and so benignant in its doctrines, instead of bringing the glad tidings of peace and good will to men, unhappily for the cause of virtue in general, seems rather to have been the source of strife, hatred, and persecution. —But History shews us, that this was the work of selfish and designing men, who perverted religion from its original intention, in order to gratify their avarice or ambition—The establishment of Christianity, therefore, it appears, did not better the condition of the Irish. The order of Priests, under a new name, were as fond of power and emoluments as the order of Druids; and petty wars and clannish broils continued to divide the people, and to weaken the country as formerly—when, about the end

herefies of Pelagius and Arius; he converted the Ifle of Man, where he founded a Bifhoprick, and returned to Armagh in 448, and fhortly after he completed the converfion of all Ireland.† He clofed a long and laborious life, in the 120th year of his age, at Saul Abbey, on the 17th of March 493, and was buried in the fame grave with St. Bridget and St. Columb—Great difputes however have arifen concerning the place of his burial, the Scotch affirming that he was interred in the cathedral of Glafgow.—His genuine works were collected and publifhed by Sir James Ware in the year 1656.

† We have a curious anecdote upon the authority of Sir Edw. Coke: " that at a general fynod of all the clergy of Ireland, *the Priests were allowed to have wives!*" — As the Irifh have always been famous for their attachment to the fair fex, it is probable the good Saint could not effect his converfion of the people without this indulgence.

* Hiftory has not told us, what were the profits of the fee of Armagh in the early days of Chriftianity—At prefent, its honours and emoluments are far beyond any thing in the conception of the original Twelve.—The Archbifhop of Armagh, like his Grace of Canterbury, takes place next to the Royal Family, preceding all the temporal Peers; he is at the head of the eftablifhed Hierarchy, with a vaft influence and patronage both in Church and State; he is lodged in a fuperb palace, and fays his prayers, occafionally, in a lofty, highly decorated Cathedral, amidft a numerous retinue of inferior clergy, quirifters, and other officers. — The fee of Armagh is always filled by an Englifhman, generally of noble defcent; the prefent Prelate is of the Bute family, with a revenue of from 14 to 16,000 pounds per annum.

It was faid by a celebrated Traveller, " that if St. Peter was to vifit modern Rome, he would not know his own religion." — If St. Patrick was permitted to have a peep at the prefent Archbifhop of Armagh celebrating Church fervice amidft all his eccleſiaſtical grandeur, he would be aftonifhed at its wonderful improvements, and, no doubt, admire the fplendor of a *State Religion!*

end of the eighth century, Ireland was invaded by the Danes, or Normans. Against this enemy the Irish contended for a number of years, till 845, when Turgesius the Dane was proclaimed King of all Ireland.

But no sooner did Turgesius get all the power into his own hands, than, as usual, he abused it, and became a tyrant. The Irish rebelled against their oppressors, and massacred a great number of the Danes; but these occasionally receiving reinforcements, the war continued with alternate success, when the country was invaded by Magnus King of Norway. Both parties uniting against this new invader, Magnus was defeated and driven from Ireland.

After this event, several Monarchs, it is said, arose in Ireland, who deserved the name of King by their good conduct. These were Malachy I. and II. and Brian Boromy. This latter Monarch is celebrated above all for his wisdom and bravery;* and Ireland, for a time, was prosperous and happy; when, in the year 1014, at the famous battle of Clontarf, he defeated the Danes, but lost his life in the 88th year of his age.

After Brian's death, Ireland again became the prey of party feuds, arising from the intrigues and ambition of the provincial Chiefs. These destructive contentions lasted for many years, until an event took place, that forms an important æra in the history of Ireland, and for which we have something like authentic records—This was the invasion of Ireland by the English. The first adventurers were two private gentlemen, named Fitz-Stephens and Fitzgerald. They crossed the sea from Wales with about 300 men in the year 1171; and they were soon followed by Earl Strongbow with 1200 more. —Their pretext for coming into Ireland should first be explained.

In the destructive contentions of the Irish Chiefs, O'Dermot, O'Connor, O'Nial, O'Rourk, &c. each claimed the ascendancy. Not content with defeating O'Rourk in battle, O'Dermot carried off his wife, a woman of singular beauty, for whom he had conceived a violent passion. A junction of parties having at length taken place, and chastity, even in those rude times, being

* Brian's wisdom is evident, from the praises bestowed upon him by the Clergy, to whom he was prudently attentive and generous.

ing considered as a virtue, O'Dermot was defeated, deposed, and forced to leave the island. He landed in England, and solicited the assistance of Henry II. to recover his dominion, which, when effected, he meanly offered to acknowledge Henry as his liege Lord. The English King, glad of such an invitation, dispatched the before-men ioned party to the aid of his new ally; and, in the year 1172, Henry in person, with a considerable army, landed at Waterford.

The rape of Helen, and the destruction of Troy, have conferred immortality on the Grecian bard. The siege of Troy, it is said, lasted ten years—but the infidelity of O'Rourk's wife hath caused Ireland to groan under innumerable evils for more than six hundred years!

It was not long before Henry contrived to obtain possession of a considerable portion of the eastern part of the country. The Irish Chieftans, for some time, were pleased with having a powerful Prince among them; he gave them entertainments, flattered their vanity, and even gave them the title of *King*.* Henry and his immediate successors called themselves only the *Lords of Ireland*. The despotic Henry VIII. was the first who assumed the Regal title.

Well satisfied with his expedition, after establishing his power and influence over a great part of the country, Henry left Ireland after a residence of only five months. —Such was the first settlement of the English in Ireland, which they sometimes called a conquest, an acquisition, or an alliance, as their power or their weakness happened to preponderate.

Henry's immediate successors did not pursue the design of conquering Ireland. Satisfied with having their power introduced into the island, and recognized in certain districts and portions of it, they made no attempt to

* The *wild* Iriſh do not differ, in this reſpect, from the *enlightened* Europeans of the preſent day.—Flatter a man's vanity, put on his ſhoulder a ribbon, clap on his breaſt a gilt ſtar, and give him a title, and what may you not make of the great baby?

Behold the child!——————
Pleas'd with a rattle, tickled with a ſtraw;
Some livelier play-thing gives his youth delight,
A little louder, but as empty quite;
Stuck o'er with titles, and hung round with ſtrings,
Scarfs, garters, gold, amuſe his riper years;
And beads and pray'r-books are the toys of age!—

to extend it farther. The colony was left to thrive by its own resources, and the occasional accession of new settlers. The colony did not, for a long time, much extend beyond its original limits; rather the reverse.—The land occupied by the English Colony (or *The English Pale*, as it was then called) reached only a few miles around Dublin, in the time of Edward III. that is, 150 years after the first settling of the colony.

This narrowing of the English Pale arose from two causes—First, from the hostilities committed by the settlers against the districts by which they were surrounded, and from which arose a general alarm, and a powerful confederacy against them.—Secondly, the successors to the first English settlers, who became possessed of lands in the interior of the country, had gradually renounced their dependance on the primary settlement; and, in process of time, had adopted the laws, the dress, and even the language of the natives.

These English families, now transformed into Irish inhabitants, were moreover particularly inclined to oppose the extension of the Pale and English law. They held their lands by the *Brehon* or Irish law, which totally differed from the English law. And in order to secure themselves still farther, and more completely to disclaim any connection with the English, they even assumed Irish surnames, such as *Mac-Yorice*, *Mac-Morice*, *Mac-Gibbon*, &c.

Owing to these circumstances, a new class of inhabitants arose in Ireland, distinct from both the English and Irish. It was formed of those English families who had, from time to time, renounced subjection to the English government. The English called them *The Degenerate English;* they formed numerous tribes and clans, and were formidable enemies of the English colony.

At length, in the 36st year of Edward III. A.D. 1361, a new expedition was projected to Ireland. Lionel Duke of Clarence, the King's second son, was the leader of the enterprize. He had married the only daughter of Bourke the *Red Earl*, and claimed all his lands in Ireland as her dower; but an Irish clan of the name of Mac-Williams had taken possession of the lands. The Duke's expedition therefore was both to recover his lands, and to punish the degenerate English; but as he brought with him

him but a small force, and received no support in the country, he was obliged to relinquish his enterprize.—But before he left Ireland, he held a parliament in Kilkenny, in the character of Lord Deputy, and got a law passed, known by the name of *The Statute of Kilkenny.*

This statute shews, that oppressive laws are an old evil in Ireland. — It recites, " that the English of the realm of Ireland were become *mere Irish* in their language, names, dress, &c. had rejected the English laws, and submitted to those of the Irish, with whom they had united in marriage, to the ruin of the English interest. It is therefore enacted, that marrying and *gossipping* among the Irish shall be punished as high treason; to use an Irish name, to speak the Irish language, to ride without a saddle, or entertain any Irish bard or minstrel, rhymer or news-teller, &c. his lands shall be forfeited."

An expedition to Ireland was undertaken by Richard II. who landed in Ireland with a considerable army. As Richard was desirous of exhibiting his greatness to the Irish Chiefs, so they were willing to shew their consequence; they flocked to Richard's court from all quarters; no less than 75 independent Chiefs were entertained, and four of the principal, O'Nial, O'Connor, O'Brien, and Mac-Murchad, had the honour to sit at the King's own table, clothed in robes of state; some of them were even knighted!—Yet, after all this parade, Richard was obliged to leave the country without enlarging the Pale.

After this no expedition was attempted against Ireland for more than a century, during which there was almost a continual warfare between the English Pale and the natives. The colony however continued still to exist; it defended itself by making alliances sometimes with one Chief, and sometimes with another; occasionally acting with vigour, and then forgetting the statute of Kilkenny as circumstances made it necessary.

The inhabitants of Ireland may now be classed as follows:—1. The native Irish. 2. The degenerate English. 3. The English subjects of blood, possessed of property, and sometimes attending their parliament. 4. The English subjects of birth, who composed the government of the colony, and were assisted by England.

Such was the situation of affairs in Ireland at the accession of Henry VIII. A. D. 1509, and at this time the Pale

Pale contained only four counties. Henry did indeed assume the title of *King* of Ireland, and had caused certain districts without the Pale to be divided into counties, but it was only a nominal division. The *Black Rent* continued to be exacted from the inhabitants of the borders of the Pale by the surrounding Chiefs, who still considered themselves as independent, and, as such, entered into treaties of peace with the English King or his Lieutenant.

Such was the state of Ireland during the reigns of Henry VIII. Edward VI. Queen Mary, and part of Q. Elizabeth's reign—on one side continual coercion, on the other a constant repulsion.

At length, religious zeal stepped in to augment national prejudice. — The violent measures pursued in the reign of Edward VI. in order to force the Protestant religion upon the Irish, had the natural effect of attaching them more firmly to their own religious system; and a general spirit of hatred to the English government manifested itself at the commencement of Elizabeth's reign.

This disposition was favourable to Philip II. of Spain, for promoting his hostile designs against England; partial invasions of Ireland from Spain had been attempted several years before the sending out of the famous *Armada*; and Philip said he had two claims upon Ireland, one on account of the Catholic religion, the other because the Milesians came originally from Spain!

Spain, by its situation, is well situated for a sea intercourse with Ireland—Spain was then the most powerful, the most ambitious, and the most bigotted nation in Europe—An army of several thousand Spaniards were, accordingly, landed in Ireland, accompanied by a Nuncio from his Holiness the Pope, who took possession of Kinsale. Thus England found herself in danger of being hedged in by the formidable power of Spain, both on the east and the west; on one side by the Netherlands, on the other by Ireland.

These considerations determined the English to make extraordinary efforts to obtain the entire possession of Ireland. Accordingly a large army was sent under the command of Lord Essex, the Queen's favourite, which, assisted by the advantages already possessed by the English government, by the dissention of the Irish Chiefs,

and

and by the memorable defeat of the *invincible* Armada, effected a complete reduction of the country, after a war that lasted about seven years.

Queen Elizabeth, however, did not live to see Ireland entirely subjected; for the final treaty with O'Nial of Tyrone, did not take place until some days after her death. James I. is therefore the first English monarch, who possessed the entire dominion of Ireland.

The English having at length overcome the Irish, the then condition of that country is thus described in the following pathetic effusion of an Irish bard:—

'O the miserable condition of my dear countrymen!— 'How languid their joys, how pressing their sorrows!— 'The wreck of a ruin'd nation; the wretched crew of a 'vessel long toss'd about by tempestuous waves, and finally cast away!—We are become the prisoners of the '*Saxon* nation, the captives of a remorseless tyranny. '—Our sentence is pronounced, our destruction is in'evitable.—O frightful excruciating thought!—Liberty 'exchanged for servitude, beauty for deformity, inde'pendence for slavery!—A brave people become a des'ponding race!—How came this vile transformation?— 'We are not the same people! — Need I appeal to your 'own senses—but what sensations have ye left? — Over 'our whole island, every kind of illegal and extrajudi'cial proceeding hath assumed the strong form of law, 'and our only security depends upon a submission to 'lawless law.——Mark the change which these bold in'truders have wrought on the face of our country—they 'have hemm'd in our green lawns, the former scenes of 'our virtue and glory—they have disfigur'd with towers 'and ramparts, those fair fields which Nature intended for 'the support of his creatures—that Nature which we 'see defrauded, and whose laws are so wantonly coun'teracted, that this lately free Ireland is metamorphosed 'into another *Saxony!*—The slaves of Ireland no longer 'recognize their common mother; she disowns us for 'her children; we have lost our ancient forms; and we 'now see only insulting *Saxon* conquerors, and submis'sive *Irish* natives!——Helpless land! thou art a shat'ter'd bark, over which the tempestuous sea hath burst 'its way, and we can scarcely perceive a part of the 'wreck in the rude hands of the plunderer — Yes, the

'plunderer hath refitted you for his own uses, and we 'are new-moulded for his own purposes.——Ye Israel-'ites of Egypt, ye wretched inhabitants of oppressed '*Erin*, is there no relief for you? — Is there no Hector 'left for the defence, no Hero for the recovery of Troy? '—Send us, O God, a second Moses to redeem thy peo-'ple from the hands of these cruel *Saxons!*' *

The

* The Iriſh and Welſh Bards (who were both ſubjected for the ſame purpoſes) called the Engliſh, the *Saxon* nation. Edward I. to make ſhort work of the buſineſs, collected together a number of the Welſh Bards, and then had them all maſſacred!——See Gray's beautiful Ode, "Ruin ſeize thee, ruthleſs King, &c."

It was long before the Iriſh Bards, or wandering Minſtrels, were totally extirpated by the Engliſh power; they formed a conſiderable body in Queen Elizabeth's time; the famous Carolan, born 1670, may be conſidered as the laſt of the order— Sometimes may yet be ſeen a few wandering Harpers both in Ireland and Wales. — Scarcely any thing can ſtrike the mind with a more pleaſing, ſoothing melancholy, and ſo powerfully excite ideas of romantic times, than a grey-headed old man, chanting his legendary tales, accompanied by the wild, but ſweet and impreſſive notes of the harp. ——Who ſhall refuſe the authority of Scripture? — King David himſelf has given celebrity to this ancient inſtrument; which, if capable of producing "ſweet ſounds" from the hands of a man, what muſt be its effects when touched by the delicate fingers, and accompanied by the fine voice of a beautiful woman!——

Ireland, for ſeveral ages, was famous for muſic and poetry—The Scotch and the Iriſh, each of them, contend for the honour of Oſſian's Poems; probably they are formed from both the nations, as they then had but one common language, the *Erſe* or *Iriſh*.

Giraldus Cambrenſis, who went to Ireland in the reign of Henry II. gives a ſtriking account of the ſtate in which he found the muſic of that country. This celebrated Prelate, a native of England, and probably influenced by a portion of Engliſh prejudice, a man well acquainted with muſic as taught in thoſe days, publiſhed an Itinerary, which contains this paſſage:—"The attention of this people (the Iriſh) to muſical inſtruments I find worthy of commendation, for their ſkill, beyond all compariſon, is ſuperior to that of any nation I have ſeen. In their inſtruments, the modulation is not as our inſtruments; the ſounds are rapid and precipitate, yet, at the ſame time, ſweet and pleaſing. It is wonderful how in ſuch precipitate rapidity of the fingers, the muſical proportions are preſerved; in a rapidity ſo ſweet, an irregularity ſo regular, and diſcords ſo concordant, how the melody is rendered ſo harmonious!"

And ſuch was the celebrity of Iriſh muſic a century preceding Cambrenſis, that the Welſh bards, ſo famous in this ſcience, ſought for inſtructions from the Iriſh.—"Griffith ap Conan (ſays Powell) brought over with him from Ireland divers cunning muſicians into Wales, who deviſed, in a manner, all the inſtrumental muſic now in uſe."—"The Welſh muſic (ſays Selden) for the moſt part, came out of Ireland with Griffith ap Conan, Prince of Wales, about King Stephen's time."

The English government being now generally established by force of arms, there seemed a probability, that the inhabitants would gradually accommodate themselves to the English laws and customs, and that peace at last would prevail in Ireland. But certain events had lately taken place, that gave rise to animosities and contests as obstinate and as bloody and as disgraceful as any that had yet happened—We allude to the *religious* dissentions caused by the forcible introduction of the Reformation amongst the Irish.

The first attempt to introduce the Reformation into Ireland, was in the reign of Edward VI. when orders were sent for using the English liturgy in all the churches, and directions were given for removing, selling, or destroying all the ornaments, &c. of the Catholic religion; neither argument, nor reason, nor persuasion were used, but the harsh commands were executed with severity and strictness by an insolent soldiery!

On Queen Mary's ascending the English throne, all these proceedings were suddenly and violently reversed: The ancient order of things was again established; the Latin litany and Catholic ornaments were restored to all the churches; and the fires of Smithfield were kindled by this bigotted and impolitic woman—Persecution, with all its horrors, were renewed in the sacred name of Religion! *

At

* There is a great similarity between this Queen Mary and James II.—Both of them, by their bigotry, ruined the cause they were anxious to promote.—It may be said, that the people of England became Protestants, not so much from the convictions of Reason, as from the fears of Popish despotism.

What a horrible picture does History give of the folly and wickedness of men!—It is but little known, because most of the English historians only skim the subject, that the Scotch suffered much by persecution in the reign of CharlesII. In one respect this was rather unaccountable, as that monarch was an unprincipled libertine; but it was a *State business*, to make Episcopacy the *State religion* of Scotland.——The Bishops of Rome, in the plenitude of their power, beat down every attempt to enlighten and enfranchise the human mind; they persecuted, and at length extirpated the Albigenses—The Spaniards, under the influence of that terrible *State engine*, the Inquisition, burnt, and persecuted, and banished, in the name of the Holy Trinity, millions of Moors, Jews, and Heretics! — The French dragooned the Hugonets— The English persecuted both the Irish Catholics and Scotch Presbyterians — Calvin and the Presbyterians took occasion to domineer in their turn — And thus the work of Persecution went round in civilized, enlightened Europe!

At Queen Elizabeth's accession, another reformation took place—the Catholics were again put down, and Protestantism gained great strength during her long and prosperous reign.

King James pursued the business of reformation with great eagerness, and his power being much greater, his efforts were attended with greater effect. As a further step towards establishing the Protestant religion, he escheated, or forfeited, six of the northern counties, viz. Antrim, Armagh, Down, Derry, Donegal, and Tyrone, settling in them large colonies of people from Scotland, and some from England—hence Derry is called *London-Derry*, as being, most of it, the property, by Royal grants, of the 12 incorporated Companies of the City of London.

From this time, the people of Ireland may be viewed in three distinct classes, viz. the Irish, among whom were the descendants of the first English settlers, or "the degenerate English," as they were called, all Roman Catholics—the Scotch settlers, nearly all Presbyterians—and the new settlers, who were all of the Episcopal, or *established* Church, and who, tho' fewest in number, were the greatest in power, as having the government of England to support their proceedings, and for whose benefit, in fact, the whole political system of the country was and is calculated. — And this state of parties is nearly the same at this day.

In order to complete the predominancy of the Protestant party, all the former penal statutes were put in force, and new and very oppressive ones were added to them.—By such measures as these, the Catholics were completely excluded; and hence arose those formidable party distinctions, of *Catholics*, *Presbyterians*, and *Protestants*, which have ever since divided and distracted Ireland.—The religious prejudices of the two first are dexterously played off against each other; whilst the third party, the least in number, contrives to domineer over them both, and turn every circumstance to its own advantage and emolument.

An union was now formed between the ancient Irish, who, after losing their lands and their laws, were now to lose their religion, and the old English, whose Lords and men of influence were to be deprived of their consequence

quence, whose Priests and Lawyers were thrown out of employment, and whose numerous people had their churches taken from them by force, and punished for not conforming to the religion of their oppressors!—All these united, under the banner of the *Catholic Faith*, against the Protestants, as against a common enemy.

The English government, was so much distracted by the contest between Charles I. and the Parliament, that little attention was paid to the affairs of Ireland. Irritated by oppression, and favoured by a combination of events, a general insurrection was planned, and carried into execution by the Irish in October 1641; many of the Protestants were killed, but the scheme miscarried, and only added to their misfortunes. *

The Catholics of Ireland, at this time, were in fact stretching out their hand to assist King Charles, but the infatuated Prince did not see it. He threw himself upon the Scotch, who deserted him. He called upon the Irish when it was too late.

The Irish having been baffled in their attempts upon the Castle of Dublin, both the Loyalists and Parliamentarians united against them. At length, Cromwell, that fierce and hypocritical usurper, came with a large army, and cut off by the sword the inhabitants of Drogheda and several other towns.—The limits of this sketch will not admit of our entering into a detail of these bloody scenes; they would only shock the feelings of our readers, and shew the depravity of human nature exhibited in a cruel and remorseless war which continued eleven years.

New

* By the Engliſh writers, this inſurrection has been called a maſſacre; indeed it was ſomething very like one.—It is impoſſible to juſtify maſſacre or aſſaſſination, yet it may be ſaid, that they have their degrees of guilt, their ſhades of provocation.—The Iriſh maſſacre has a different complexion from the horrible butchery of the Proteſtants at Paris, &c. † —To excite the firſt, there was a long train of national oppreſſions and individual miſery—for the other, nothing but the bigotry, the treachery, and the cruelty of a King, a Prieſt, and a Woman!

† St. Bartholomew's Day, 25th Auguſt 1572, when 70,000 Hugonets throughout France were murdered, in the name of Chriſt, with every circumſtance of treachery and cruelty!—If there be any bigots in America, let them read the hiſtory of Charles IX. and Catherine di Medicis — See De Thou's Hiſtory, Voltaire's Henriade, &c.

New colonies were transported into Ireland, in order to occupy those lands which were either taken from the Catholics, or had become vacant by the destructive effects of the war. All the native Irish were commanded to retire into the province of Connaught, which had become nearly desolate; and a certain day was fixed for them to retire, on pain of death!—It was one of those cruel measures which resemble the expulsion of the Moors from Spain; with this difference, that the Moors were the invaders some centuries before; whereas the Irish were the original inhabitants, and had the only legal right to the soil.*

The famous revolution of 1688 in England (famous for its beneficial consequences to the liberties of mankind)† was the cause of another war in Ireland. Driven from a throne which he unworthily filled, James fled to France, from whence in March 1689, he sailed with a great armament, and landed at Kinsale. He found the greatest part of the country in his favour; by altering the charters, he had procured a majority of Catholics in Parliament, and Lord Tyrconnel and most of the Popish Lords had taken arms in his defence.

James soon found himself at the head of 40,000 men, with whom he marched to the North, were lay the strength of the Protestant interest At the siege of Derry‡ he wasted his time, and weakened his army;‡ and in June 1690, he was defeated by his son-in-law, William III. at the fa-

‡ Londonderry mous

* By the wars which took place in Queen Elizabeth's time, those of Cromwell, and those of King William, the inhabitants of Ireland were reduced from three millions to half the number at the capitulation of Limerick, when many thousands of the Catholics left the country entirely, and settled in France and Spain—hence the origin of the Irish brigades in those countries.

† Besides the beneficial consequences resulting to Liberty in general from the Revolution of 1688, it should be remembered, that King William shewed much liberality in religious matters. He not only granted the Irish Catholics the exercise of their worship as in the reign of Charles II. but he endeavoured to reconcile the jarring controversies of the English Episcopalians and the Scotch Presbyterians—but herein he failed—the man who moved and directed the intricate politics of Europe, was not able to overcome the bigotry and obstinacy of a few Priests and Presbyters!

‡ The siege of Derry, which continued three months, is remarkable in the history of Ireland for the bravery and hardships of the inhabitants, who, whilst they baffled all the efforts of King James's army, suffered all the miseries of a protracted siege, the sword, famine, pestilence, and death —See the Journals written by the Rev. Col. Walker, &c.

mous battle of the Boyne. Soon after, James retired to France, resigning the government of a great empire to a more deserving rival.—It has been said, that King James foolishly bartered three crowns for three masses; even the Pope disapproved of his rash bigotry; and the Catholics, to this day, look upon his memory with contempt. He pined the remainder of his days, a zealous but a disappointed devotee, in most inglorious obscurity, a dishonourable dependant upon the ostentatious bounty of Louis XIV.

The war continued above a year longer between King William's Generals, and the French and Irish forces, who were defeated at the battle of Aughrim. At length, the surrender of Limerick put an end to the war. This capitulation, known by the name of *The Articles of Limerick*, was signed on the 3d of October 1691. By this capitulation, the rights of the Irish Catholics were to be ever after known and established.

The principal articles were, That the Catholics should exercise their religion in the same manner as they did in the reign of Charles II. that they should take the oath of allegiance, and enjoy the common privileges of subjects.—These articles were observed by King William, who constantly resisted the endeavours of the Church party to have them repealed. Indeed the inclination of that Prince for religious toleration, forms the brightest part of his character, and must ever do honour to his memory.

Immediately after his death, this system was departed from. In the reign of Queen Anne, acts of parliament were passed, which gradually violated the Articles of Limerick—To complete the system of oppression, the *Laws of Discovery* were enacted.

By these laws, the Catholics were disarmed; they could not purchase land; if one son abjured the Catholic religion, he might then dispossess his father and all his brothers; if a Catholic had a horse in his possession, if worth 50 or 100l. a Protestant might take the horse from him, upon paying down 5l. if the rent paid by any Catholic was less than two-thirds of the improved value, the *Protestant Discoverer* might take the lease; and various restraints were laid on their education, and penalties inflicted for obtaining it abroad!

By

By these and many other acts, and by the coercive spirit of the English government, the Irish were reduced to a very low condition indeed—Yet, in the midst of this degradation, occasional efforts were made by individuals to assert something like national independence. Mr. Molyneux published a pamphlet entitled, "The Case of Ireland being bound by English Acts of Parliament," wherein the writer vindicates the independence of the Irish Parliament in their own affairs. The English Parliament were greatly offended at such presumption; they addressed the King on the subject, and had the pamphlet burnt by the hands of the hangman!

In the year 1719, in consequence of a decree of the Court of Exchequer, in the Annesly cause, the English Lords took offence, addressed the King, and obtained an act declaring, "that Ireland is subordinate unto, and dependent upon, the imperial crown of Great Britain; and that the King's Majesty, by and with the consent of the Lords and Commons of Great Britain, has full power and authority to make laws and statutes to bind the people and the kingdom of Ireland."

Dean Swift, having been disappointed in becoming a Bishop in England, resolved to become a Patriot in Ireland.* The English Council having, in the year 1723, granted a monopoly to one Wood, to circulate a species of half-pence in Ireland, the Dean, thro' his Drapier's Letters, contrived to agitate the public to a violent degree—The question was, Wood versus Ireland, or Ireland versus Wood?—The baseness of the coin, and the shamefulness of the job, were the common complaint, but the manner of forcing the coin on the nation, was the principal objection. A general outcry was raised against the half-pence, most of the towns protested against them, and the country gentlemen directed their tenants not to receive them.

The

* On the expulsion, or abdication of the Stewart family in the person of James II. there arose in England the two great parties called *Whigs* and *Tories*—King William and the two first Georges were of the former, Queen Ann of the latter party. During Ann's reign, Swift had distinguished himself as an active partizan in favour of the High Church system; but on the coming in of the Hanover family, he found himself on the wrong side; instead of being made an English Bishop, he only got an Irish Deanery—Hence (like many others) disappointed ambition was the origin of his patriotism.

The situation of Ireland, at this time, was exactly similar to that of America in the case of the tea business —but the Ministers of those days were wiser than Lord North and his associates. * The former considered the great danger that might arise from a commotion so near to England, when a new family had been but lately put upon the throne, and when one of the Stewarts had already created a rebellion in Scotland—They wisely cancelled Wood's patent.

But this circumstance excited a spirit of discontent, and the people, even then, made loud complaints. Dean Swift, in his "View of the State of Ireland," aptly compares it to an hospital, in which the household officers (the English placemen) became rich by their emoluments, whilst the poor inmates, for whom the house was built, were starving for want of food and raiment.

In the year 1751, a contest arose between the English Crown and the Irish Parliament, concerning unapplied money then in the Treasury—To whom did the money belong?—His Majesty, the King of England, said it belonged to him—The Irish Parliament said it belonged to them as the Representatives of the People—The contest was long, and sometimes warm—At length, the Crown settled the question, by taking the money, about250,000l. to England; and took care never again to leave a surplus in the Treasury, but always to have the nation in debt. †

The general discontent of the people was, at all times, much augmented by that most odious tax, *Tythes to the established Clergy*, ‡ whereby the Catholics and Presbyte-

* Lord North has been much blamed for his *impolitic* conduct at the commencement of the American revolt—*Wise* politicians say, "that if one third of the money spent upon a fruitless war, had been *judiciously disposed of in another way*, the contest would have been settled, and no blood shed."

† Instead of a surplus, the Irish government now owes a debt of between twenty and thirty millions sterling—This is but a trifle in comparison with the national debt of England, about 500 millions — more than 2,200 millions of dollars!

‡ This must be a very grievous tax in Ireland, where 7-8ths of the people are NOT of the established Church;† but, even in England, where the majority is of the Establishment, tythes are complained of as a grievous burthen, and various schemes have been suggested to remove this odious load from the shoulders of the people.

† According to a late estimate of the number of inhabitants of Ireland, there were 3000,000 of Catholics, 600,000 Dissenters, and 500,000 Episcopalians.

terians, a vast majority of the inhabitants, were forced to yield the tenth of their labour and produce to a set of men, from whom they received no return, even an imaginary one in the article of religion—on the contrary, the establishment of the Episcopalian worship formed their most vexatious burthen, as they had to maintain their own Clergy besides. The consequence was, that there was ever, in some one part of the country, malcontents disturbing the public peace under the names of *Hearts of Steel*, *Hearts of Oak*, *White Boys*, &c. but as they were of the lowest orders, and had no regular system in their operations, they were always put down with loss, and their unsuccessful efforts only added to the strength of the governing power.

The Episcopal Clergy being thus lifted above their fellows, it may well be imagined, that they did not always conduct themselves with that humility and benevolence, which are, or ought to be, the distinguishing characteristics of Ministers of the Gospel *—The Presbyterians, in particular, felt the galling weight of these Church oppressions, and numbers of them every year emigrated to America. †

In the administration of Lord Townshend, it became the policy of the English cabinet to exalt the body of the people, in order to break an Aristocracy which had long domineer'd over the country, and even thwarted the English government. The popular Dr. Lucas, in the year 1768, moved for a bill to shorten the duration of Parliament

* If there are men who make their parishioners pay to the uttermost farthing, because they have the law on their side — there are amiable exceptions of others, who adorn the dignified office of the Christian Ministry with its characteristic virtues, mildness, benignity, and brotherly affection; who feel for the unhappy condition of the people, and stint themselves to not more than half of what they are entitled to by law.

† The Presbyterians, or Dissenters, both in England and Ireland, were always considered as forming an important portion of what are called *The Whig Party*, attached to the Revolution principles of 1688; accordingly, in the reigns of King William and the two first Georges, they were treated at least with seeming respect under what is called *The Act of Toleration* —Immediately on the accession of George III. the *Tory*, or Church and State system, became the order of the day at St. James's, when the Dissenters were thrown into the back ground. Having ventured to approve of the American revolution, and the first openings of that of France, they fell into complete disgrace with the ruling party—not only into disgrace, but into something very like persecution. —— See the accounts of the riots at Birmingham, &c.

ment, which had hitherto continued during the King's life; it passed the Privy Council, and, contrary to the expectation of the Aristocracy, the bill returned from London, with the addition of a year. The Irish Parliament then became octennial.

The questions of commercial restraints and the subserviency of the Irish Parliament, had hitherto only been discussed in pamphlets—but, in the year 1778, the measure of public distress being nearly full, united all ranks in their endeavours to procure a removal of those shameful restraints by which the trade of Ireland was bound up and prohibited by England.

In Parliament, the disadvantages under which the trade of Ireland lay, was convassed with unusual warmth, and the subject was taken up by the people. Melancholy pictures presented themselves of the deplorable condition of the country, of the ruinous state of manufactures, and the stagnation of credit. All these circumstances of public distress were justly ascribed to the false and cruel policy of the British ministry.

The embargo laid upon the exportation of provisions in the year 1776, was attended with most destructive consequences; "it was sent as a curse, and it operated as a pestilence;" it excited very general complaints, as it was well known that it was laid to enable some English contractors to amass princely fortunes on the miseries of the people of Ireland!

But another cause strongly operated to excite the people of Ireland to reflect on their situation—The contest with America, by the numerous writings published on that occasion, cast a new and effulgent light on the *Rights of Man* — If the Americans had revolted in order to *prevent* grievances, what should the Irish do, who had actually groaned under a most oppressive load of wrongs for ages? — National considerations were blended with commercial ones, in the just complaints of the Irish—The numerous restraints on their trade, which were modified, explained, and confirmed in fifty or sixty acts of the British Parliament, were too obvious tokens of slavish dependence and provincial subordination on a *foreign* Government, which often indecently sacrificed the interests of all Ireland to a single manufacturing town in England!

In

In the midst of this national distress and degradation, there arose a powerful advocate in favour of an oppressed people — THE VOLUNTEERS OF IRELAND, that phenomenon in the history of nations—50,000 men, with arms in their hands, whilst they protected the kingdom from foreign invasion, declared their intention of giving freedom to their country !

On the 12th of October 1779, the Parliament of Ireland met. The eyes of the people were turned towards them, in anxious expectation of their determination—the spirit of the nation communicated itself even to a body hitherto very subservient. The address from the Commons contained the following expression: " We beg leave to represent to your Majesty, that it is not by temporary expedients, but by a *Free Trade alone*, that this nation is to be saved from impending ruin"—The address from the Lords said, " We think it our duty to represent to your Majesty, that a *Free Trade* is absolutely necessary to enable this nation to support your Majesty at this important period with exertions suited to its loyalty, and preserve it from utter ruin."

These Addresses were presented to the Lord Lieutenant, in order to be transmitted to the King—it may be said, that they were presented at the point of the bayonet, as the Volunteers lined the streets from the House of Parliament up to the very gates of the Castle !

This bold step, together with a limited money-bill, had an effect. Lord North brought before the British Parliament certain resolutions tending to alleviate the sufferings of the Irish nation. His measures, however, were but few and unimportant; and it was evident that he was not hearty in the business. At length, on the 15th of February 1782, the famous Volunteer Convention at Dungannon gave a new spring to the national spirit.

This Convention consisted of 145 Representatives from Volunteer Corps—They asserted the right of Citizens to bear arms, and they rejoiced in the relaxation of the penal laws against the Roman Catholics — Their address to the minority in Parliament is peculiarly energetic, and is worthy of record — more for the manly spirit of its intentions, than for the fulfilment of its objects:—

My

"My Lords and Gentlemen,

"We thank you for your noble and spirited, though hitherto ineffectual efforts in defence of the great constitutional and commercial rights of your Country—Go on—The almost unanimous voice of the People is with you, and, in a free country, the voice of the People must prevail. We know our duty to our Sovereign, and are loyal; we know our duty to ourselves, and are resolved to be free. We seek for our rights, and no more than our rights; and, in so just a pursuit, we should doubt the being of a Providence, if we doubted of success."

The Convention passed the following resolution, with only two Dissentients:—

"Holding the right of private judgement, in matters of religion, to be equally sacred in others as in ourselves, — Resolved therefore, That as Men and as Irishmen, as Christians and as Protestants, we rejoice in the relaxation of the penal laws against our Catholic fellow-subjects." *

The consequence was, that the English cabinet saw it necessary to give a further extension to the trade and freedom of Ireland, and to relax the Catholic penal laws still further—The successful resistance and independence of the American States, had lowered the pride of the English Ministers, and finally drove Lord North and his party from the helm of government.

The death of the Marquis of Rockingham broke up the Whig Ministry in England, and a new Lord Lieutenant, Earl Temple, was sent to Ireland—Another change of Ministry taking place, Lord Temple was recalled, and in June 1783, Lord Northington was sent in his place.

But

* It should not be forgotten, that the Volunteers of the North of Ireland were nearly all Presbyterians, and that with these men originated the idea of a general right of suffrage — They had the courage to break thro' ancient habits, and religious prejudices, and declare, "that the Catholics were their brethren, and ought to be admitted to the rights of Men and Citizens." — It is certain, that the Presbyterian body did not receive the approbation of the Establishment for their conduct on this memorable occasion; on the contrary, Government now beheld them with a mark'd dislike and jealousy. — Whether the Catholics themselves looked upon the measure in its proper point of view, or what use they would have made of power, if they had got it into their hands, has not yet been develop'd.

But still the late measures were only palliatives, half-measures, granted by the English cabinet reluctantly, and evidently against the grain. A great complaint, in both countries, is, the inadequate state of the representation of the People, and the gross corruption of Parliament, the majority of which are either the creatures of the Peerage, or the pensioners of the Treasury.

The many fruitless applications of the people to Parliament for the correction of abuses; the inadequacy of their representation; the large portion of the House of Commons composed of boroughs the property of the Peerage; and the uniform corruption of Administration who had the Treasury always at their disposal—These considerations pointed out the necessity of a grand endeavour to purify the representation of the people, and to bring the Constitution to the practise of those beauties, of which it boasts so much in theory. *

To obtain this great and necessary object, county, city, town, and even parish meetings were held. The greatest orators in Parliament, viz. Mr. Flood, Mr. Grattan, Mr. Curran, &c. exerted their splendid talents, but in vain—Government always contrived to frustrate their measures, and, at last, beat them down by force, and passed laws to prevent the assembling of freemen or freeholders!

About these times, the Duke of Richmond, Mr. Pitt, &c. called themselves "the Friends of the People," and advocated a reform of Parliament—but no sooner did they step from the ladder of Popularity to the Treasury Bench, than they changed their sentiments, or feebly supported what it was visible they did not wish should succeed.

The Earl of Charlemont had hitherto been the chief head or leader of the Volunteers—At a review at Belfast when they addressed him, expressing their satisfaction at the decay of religious prejudices, and their wish that men of all professions should be entitled to the right of suffrage, his Lordship was pleased to dissent from these opinions!—The man who had hitherto gone along with the

* The Engliſh Conſtitution, according to De Lome, is indeed very beautuful, in theory — Look at the practice: One vaſt complicated ſyſtem of Parliamentary intrigue and corruption, branching out into a million of ramifications of peerages, places, penſions, Court patronage, &c.

the Volunteers in so many patriotic efforts, suddenly stopp'd short when they talk'd of *religious liberty*, the very essence of all liberty! — Thus, religious bigotry, Protestant bigotry too, like an evil Genius, stalk'd in to baffle the generous wishes of an enlightened people— The schism was fatal; from this time every patriotic measure proved abortive, and disappointment and discontent took place of hope and expectation.

The payment of tythes to the *established* Clergy also continued to be a source of very general discontent, particularly in the western and southern parts of the country, where a vast majority of the inhabitants are Roman Catholics, and where they are poor and depressed almost to the lowest state of human wretchedness.— As a due respect to Religion, and the rational practice of it, are most important benefits to the community, the maintenance of its Ministers ought to be liberal, and becoming their station and character—but in the Tythe system, under a proud and high-minded Hierarchy, the Proctor, like the Middle-man, is too often the scourge of the indigent peasant; unmoved by the inability of the cultivator, subject to a thousand accidents, he treads upon the heels of Providence, and seizes, with a greedy hand, what the judgments of Heaven may have left to the unfortunate farmer.

Mr. Grattan, at different times, proposed several measures in Parliament, towards meliorating the condition of the poor farmer as to this hateful burden—but the *Church and State* party were ever too strong, and rejected all modifications whatever.

Altho' the Catholics had been relieved from certain pains and penalties on account of their religious tenets,* yet they were still kept in the back ground, like a proscribed

* A heavy charge has been brought againſt the Catholics, viz. "that they conſider their obedience to the Biſhop of Rome as paramount to all allegiance to any other King, Prince, or Power whatever."—If this were true, they muſt be dangerous ſubjects in any country. — Both in England and Ireland, they were at much pains to explain this doubt to the ſatisfaction of Government — Conſult the publications of thoſe times; they intimately relate both to Religion and Politics (if they are ſeparate ſubjects) and are worthy of conſideration.—One thing we may venture to ſay with truth and ſafety, that the Pope of Rome is a very different perſonage now from what he was 2 or 300 years ago—See the eventful hiſtory of the French Revolution; the Chief Conſul has kept the eſſence of Church power in his own honds; he will not permit his Holineſs to nominate even a Curate without his permiſſion!——

scribed people in their own country—they had received favours, but they were bestowed reluctantly and ungracefully. Repeated efforts were made in Parliament in their favour, by Mr. Grattan and other popular members; and Lord Fitzwilliam came from England, with powers, as he imagined, to give them, at once, full and ample emancipation — To his surprize, he found himself opposed by the prevailing Aristocracy, who, under the imposing title of *The Protestant Ascendancy*, not only thwarted all his projects, but had him recalled with something like disgrace!—This disappointment sunk deep into the minds of the Catholics, and inclined many of them afterwards to enter into desperate measures of revenge, no less than the separation of Ireland from the dominion of England.

From this rapid sketch of the history of Ireland, the *American* reader will be able to understand the rise and progress of those parties and distinctions, which have unhappily continued, for so long a time, to distract one of the finest countries in the world—a country, whether we consider its geographical situation, the salubrity of its climate, or the abundance of its productions, is admirably calculated (if not obstructed by the evil policy of man) to yield more than every necessary enjoyment and comfort to its inhabitants. *

The happy termination of the American struggle for liberty, the then flattering appearances of the French revolution, the increase of knowledge, and the consequent decay of religious prejudices—all combined to render the conduct of the English government odious to a great part of the Irish nation. Hence, when the Catholics found themselves disappointed by the recall of Lord Fitzwilliam, that they were not to expect any amelioration of the grievous tythe laws, and that a reform of Parliament was not to obtained, then arose the Society of UNITED IRISHMEN, who, by a bond of union and a brotherhood of interests, brought together all men, of whatever religious profession, who were desirous of emancipating their country. They entered into communi-

* There is a strong similarity betwixt Ireland and Sicily, both celebrated for the fertility of their soil, and the salubrity of their climate—but both being unfortunately situated in the neighbourhood of powerful and ambitious nations, they are constantly kept in a state of foreign subjection.

nications with the then rulers of France,* who flatter'd them with the hopes of a powerful assistance—theFrench did send a fleet to Bantry-bay, but whether thro' accident or design, the scheme miscarried. Shortly after the Irish malcontents tried the business on their own strength, which brought on that most dreadful of all conflicts, a Civil War, wherein many brave and good men on both sides lost their lives, and infinite misery, in every shape and modification, ravages, rapes, robberies, burnings, whippings, hangings, and every species of torture, fell, with ten-fold fury, upon a long depressed people!—What was to be expected, when one side was actuated by a keen sense of oppression and the spirit of revenge, the other by the pride of power and the lust of dominion? — The Royal army,† and the *Orange-men*, committed numerous outrages andcruelties, in defiance of every principle of justice or humanity.—The Irish insurgents were enterprizing and courageous, but they wanted system, discipline, unanimity, and experienced leaders. —Their attempts, after a deal of blood being shed, every where failed; thousands of unfortunate rebels were put to the sword and the bayonet; many of them died upon the gallows; numbers fled the country; and many were transported as felons to foreign climes!

The particulars of this melancholy history are not only too numerous to be repeated here, but they are of too tragical a nature to give satisfaction to any class of our readers—We give this Compendium merely as a necessary introduction to the contents of the following pages.

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* It is neceſſary to remark, that the Iriſh Directory (as they were then called) ſtipulated with the French Directory for only a certain number of auxiliaries—but theſe auxiliaries never came at a ſeaſonable time, or they came in ſuch numbers, as only to excite vigilance and inſure victory to the Engliſh army, conſiſting of fully 100,000 men.

† An honourable exception muſt be made in favour of General Sir R. Abercromby, him who fell ſo gloriouſly (according to military language) in Egypt. Having been appointed Commander in Chief in Ireland, he declared in public orders, "that the very diſgraceful frequency of Courts Martial, and the many complaints of irregularities in the conduct of the troops, had unfortunately proved the army to be in a ſtate of licentiouſneſs, which muſt render it formidable to every one but the enemy."—After a ſhort ſtay inIreland, this amiable Scotchman threw up his command, and would not be concerned in ſuch a warfare.

A union of the two islands had long been wished for by the British cabinet, but as a great majority of the Irish people, and even of the Irish Aristocracy, were strongly adverse to the measure, it seemed to be a very doubtful and difficult undertaking. But the late attempts of the Irish malcontents, their open declarations in favour of an Irish Republic, and the fears of their forming a junction with the French Directory, a junction that would have been fatal to Britain, hastened the execution of a long projected design. Accordingly, every engine was set to work, in order to bring about a union of Britain and Ireland. The chief effort, and the most expensive one, was to be made in the Irish House of Commons. On the first trial of strength, there was a majority of forty members *against* the union. The English Minister put off the measure till the next meeting, in order, as he significantly said, to give the nation time to consider of it. In the session of 1799, it was soon evident, that the English cabinet had not been idle in the employment of their means — On one side, were bags of gold, peerages, and preferments*—on the other, 100,000 bayonets, restriction, and depression—powerful arguments!—On the next division, there appeared a majority of forty *for* the union! — And thus the Parliament of Ireland, like that of Scotland, sunk an insignificant atom in the overwhelming influence of England.

A number of Authors might easily be quoted, who have written on the affairs of Ireland. After a painful investigation, they will be found to consist of two distinct parties; one, sensible of its strength, vindicating the claims of England to the uncontrolled dominion and property of Ireland—the other, making loud complaints of a long series of violence and injustice, and asserting the natural claims of Ireland to be free and independent. —The English writers have endeavoured to cover the conduct of their government with the cloak of conquest, com-

* Much the same means were used to accomplish the union of Scotland with England in the year 1706, when a number of new Peerages were created, and a deal of gold *judiciously distributed*. — The Court Calender will shew how many new Lords were made at the Irish union, but it will not be so easy to ascertain the sums of money distributed; report has stated, a million and a half, besides the price of the boroughs, which were to be paid to the owners of that kind of property out of what is called the National Purse, *i. e.* the pockets of the people.

commerce, civilization—and even Religion has been brought in to justify injustice, and to sanctify ambition! —But a long and a black list of Acts appear on the statute Books, which no sophistry can palliate, no pretext can vindicate.

History has been called the eye of Wisdom, and the finger of Knowledge; but partial History can neither be the hand nor the index of Wisdom—History should be divested of national prejudices, party misrepresentations, and religious antipathies—Truth, unbias'd by all partial interests and local connections, should be the Historian's guide — *Amicus Plato, amicus Socrates, sed magis amica Veritas*—And if the truth may not be spoken in the republic of America, in what country in the world may it now be utter'd?

The people of America, beyond all others, must feel for the condition of the unfortunate Irish—If the Americans revolted against the Mother Country in order to *prevent* grievances, what should the people of Ireland do, who *have suffered* for ages under an accumulation of oppression and contumely, not to be paralelled in the history of Europe? — What would the Americans have thought and felt, if their *Revolution* had only been a *Rebellion*, and that Washington, and Franklin, and Adams, and Jefferson, and a long list of sages and heroes, had suffered an ignominious death on the gibbet?—And will they have no compassion, no fellow-feeling for Lord Edward Fitzgerald, Arthur O'Conner, Oliver Bond, Russel, Emmet, Tone, Teeling, the two Sheares,* and hundreds of others, many of them of the most amiable and respectable characters; some of them of noble birth and high expectations—who ventured their fortunes and their lives, in order to redress wrongs so long and so grievously felt?

Let it be understood, that, in the foregoing sketch, a wide distinction is always made between the English *Government* and the English *People*—Whatever is great and

* Lord Edward Fitzgerald, brother to the Duke of Leinster, and married to the daughter of the celebrated Madame Genlis; he died of the wounds he received when he was apprehended.—Mr. Bond died suddenly in prison. — Mr. O'Conner did not suffer death, but a long imprisonment and banishment. This gentleman's sacrifice to principle was not a trifling one; he was heir to a title and 16,000l. a year, with a claim to all the Court favour and patronage, that the English Minister can bestow.

and good has had its origin amongst that illustrious people—a people alike famous for Arts and for Arms; for their enterprize, industry, and ingenuity; and celebrated for the deepest researches and discoveries in whatever is useful, learned, and scientific. Need we appeal to the history of their Divines, Philosophers, Patriots, and Warriors? — America herself must own, that when liberty was extinct in every other nation in the world, England was the parent and the nurse of civil and religious freedom, sealed and sanctified by the blood of her Martyrs and Patriots—The general character of the English nation must not be contaminated with the avarice and ambition of Statesmen and Warriors — Many Englishmen, both in and out of Parliament, have lifted their voice against the cruel and unjust policy of their countrymen both in Ireland and India.* Amongst a number of writers we shall only select one, as being the latest, who, altho' he has taken his authorities from a very partial source (Sir R. Musgrave), yet he breaks thro' a cloud of prejudice, and discovers the honest indignation of a virtuous Englishman at the tyrannical conduct of his government towards Ireland:—

"The history of no nation in Europe exhibits such an uniform series of misery, oppression, and misfortunes, as that of Ireland.—It would now be equally vain and unprofitable to enquire, whether Ireland yielded by treaty, or was overcome by the sword?---The fact is, that the natives were treated like a conquer'd people, and denied a participation in the English laws. Stigmatized as helots, even intermarriage with them was deemed felony, and their murder has been adjudged no crime!---Amidst such cruel and impolitic restraints, it was not to be expected that the people would emerge from barbarity; on the contrary, they were rendered discontented and ferocious by oppression; and three successive insurrections, the fruits of a false and perfidious policy, prove bet-

* At the very moment of writing this article, we have seen an account of a victory obtained in India by the English army, relating the number of the natives slaughter'd, and the booty obtained by the different officers. —The English, with justice, accuse the French of ambition, whilst they themselves are guilty of the same crime. The black deeds charged upon Bonaparte in Egypt, are over-balanced in a tenfold degree by the English armies upon the harmless, unoffending natives of Hindostan.——See Hastings's Trial, Burke's Speeches, Belsham's History, &c.

better than any testimony, that their bondage was equally galling and ungrateful. All the bitterness of religious intolerance was superadded to civil disabilities; and a black catalogue of penal statutes exposed the unhappy Catholic to a variety of fines, mulcts, and disfranchisements, from which the more fortunate, but far less numerous class of Protestants were exempt."---*

After all, it appears to be the interest of Ireland to be connected with England, if such a connexion can be obtained on fair and honourable terms. The exalted rank which England holds in the national society of Europe, we may say of the world---her proximity to Ireland---her astonishing wealth and vast navy---her commerce, arts, and manufactures---and her excellent judicial system, admirable under a pure administration---all point that country out to Ireland, as her best, most natural, and most powerful ally.

On the other hand, may we not hope, that the government of England will at length know their true interest, and perceive, that honesty is as necessary a principle in public as in private transactions---that they will see the folly and the wickedness of dragooning and domineering over a people so necessary to their glory, even to their existence as a nation---and that ages of coercion and tyranny, will be followed by a system of justice and generosity. If half the partiality that has been shewn to the Scottish Highlanders for the last fifty years, had been extended to the Irish Catholics, they would, at this day, have been the most loyal portion of the British empire----"*But discord ariseth out of evil government, "and oppression maketh men mad.*"

* See Stephens's History of the Wars that arose out of the French Revolution, chap. 12, a work of considerable merit and utility.

It is to be regretted, that so respectable a writer should have followed so bad an authority.——Sir R. Musgrave was handsomely paid for his work, but he gained no honour by it.—He is so exceedingly erroneous in his accounts, that even Lord Cornwallis withdrew from him the sanction of his name after the first edition — And having said something offensive of Mr. T. Jones, that gentleman called Sir Richard out one morning, and sent him home with a piece of lead in his body, very near that part which gave the Widow Wadman so much uneasiness on Uncle Toby's account.

*** Having before vindicated the character of the Engliſh, ſo far as to ſhew, that many individuals have overcome governmental policy and national prejudice, and done juſtice to an injured people, it may be proper here to inſert what has been ſaid of the Iriſh by ARTHUR YOUNG, a moſt reſpectable Engliſhman, celebrated for his laudable purſuits after knowledge in that moſt uſeful of all ſciences, Agriculture.

IT is but an illiberal business for a traveller, who designs to publish remarks upon a country, coolly to sit down in his closet, and write a satire on the inhabitants. —Where very gross absurdities are found, it is fair to note them; but to enter into character and disposition, is generally uncandid, since there are no people but might be better than they are, and none but have virtues which deserve attention, at least as much as their failings. For these reasons, this section would not have found a place in my observations, had not some persons of much more flippancy than wisdom, given very gross misrepresentations of the Irish nation.

There are three distinct classes of people in Ireland—[here Mr. Young describes these classes nearly as may be seen in the historical Sketch] — The only divisions which a traveller, who only passes thro' the country without any residence, could make, would be into people of fortune and the mob. The intermediate division, so numerous and respectable in England, will scarcely attract any notice in Ireland—a residence, however, will shew, that there is another class, country gentlemen of small fortune, and renters of land. The manners and customs of people of fortune are much the same every where, at least there is very little difference between an English gentleman and an Irish gentleman; it is among the common people one must look for those traits, by which we discriminate a national character.

The circumstances that struck me most in the common Irish were, vivacity and a great and eloquent volubility of speech. They are infinitely more lively and spirited than any thing we commonly see in England; the Irish have not that surly, sullen incivility, in which so many Englishmen seem to wrap themselves up, as if retiring within their own importance. Lazy at work, but so spiritedly active at play, that, at *hurling* and other manly exercises, they shew the greatest feats of agility. Their love of society is as remarkable as their curiosity is insatiable; and their hospitality to strangers

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be their own poverty ever so pinching, has too much merit to be forgotten. Pleased to enjoyment with a joke, or witty repartee, they will repeat it with such expression, that the laugh will be universal; and their manner of telling a story, is extremely droll and amusing. The moisture, the temperature of the climate, and the vivifying western breezes, are here favourable to animal as well as to vegetable growth. The Irish are inferior to none in bodily strength and personal beauty, and perhaps they are superior to any in symmetry and agility of limbs. Always inclined to manly and martial exercises, they readily confront any undertaking, and their bodies are fitted to any climate, or to any difficulty. Even the blunders with which they have been charged by their *kind* neighbours, may have some foundation in truth, if by blunders we are to understand those quick sallies of expression, by which the regular concordance of words is broken by something bold and expressive. Warm friends and revengeful enemies; they are inviolable in their secresy, and inevitable in their resentment. Sudden ardour, universal aptitude, firm adherence, impatience of injury, and a long remembrance of it; strength of resolution, and tenderness of affection. Hard drinkers and quarrelsome, but civil and obedient. Dancing is so universal among them, that there are every where itinerant fiddlers and dancing-masters; and they dance the *Irish Jig* with amazing agility, vigour, and expression. The dark shades in the Irish picture should be ascribed to the political and religious depressions, under which they have so long been kept—particularly to the want of a liberal system of education, the only way to render a people regular, useful, and respectable.

The Irish character, upon the whole, is a good one — It would be unfair to ascribe to the nation at large the vices and follies of individuals. They are a lively and an ingenious people; and their admirable authors, such asSwift, Sterne, Boyle, Berkley, Goldsmith, &c. shew the extent of their learning and talents. Their eloquence is felt and admired in the Parliaments of both kingdoms— The English land and sea service, and, unfortunately, of several foreign countries, speak their steady and determined courage — Every unprejudiced traveller who visits Ireland, will be pleased with their cheerfulness and hospitality, and will find them a brave, polite, and liberal people.

A

BIOGRAPHICAL SKETCH

OF

MR. CURRAN.

Vitera extollimus, recentium incuriosi.

"Whoever is deemed by a common audience the greateſt Orator, ought to be pronounced ſuch by men of erudition."—HUME.

IT is a very general opinion, that the study of Law is adverse to genius; that a lively imagination cannot be tied to professional pursuits; and that wit cannot be possessed but to the exclusion of industry.

Among the many examples which might be adduced to prove the falsity of this conceit, Mr. CURRAN is not the least striking. No man has acquired higher reputation for those powers which delight and captivate the fancy, that touch the springs of passion, elicit tears from sensibility, or extort from gravity itself the burst of laughter----yet has the exertions of this gentleman raised him from the humblest walk of life, if not to the first place, certainly to the first rank at the Irish bar.---He has not, indeed, attained high official situations, or risen to those honours which are oftener the reward of *judicious* politics, than of *professional* ability; but he has acquired that which is a much stronger proof of talent, the uncontested title of being *The first Advocate in his Country.*

Mr.

Mr. Curran is now above fifty years of age—He was born in the county of Cork, of parents who were undistinguished by wealth or situation; who had neither a fortune by which they could enable their son to live independently, nor connexions by which they could advance him in a profession. They were, however, capable of giving him the rudiments of a liberal education; and that seems to be the only advantage which he derived from his family.

Having qualified himself for the University, he entered in the only character in which his circumstances enabled him to appear, that of a Sizer in the College of Dublin; a situation of which the emoluments are very trivial, while the mark of inferiority which distinguish it from that of the other students are of the most mortifying kind. The Sizers have, indeed, their tuition free of expence; but they are obliged to keep the rolls of their tutors, and attend to the weekly distribution of the fines and punishments of the pupils. They have their commons gratis, but they dine only on the fragments of the Fellows' table, and are compellable to discharge several menial offices in the dining hall.

In this situation Mr. Curran passed the first year at the University; nor did he appear, in point of pecuniary circumstances, to stand at the head of even that humble class. It is a fact, that the man who possessed powers that could mould the heart, charm the imagination, and guide the judgment of a Court or a Senate, was often destitute of a whole coat!

At the usual time (two years after entrance) he obtained a Scholarship, by which, and by the emoluments arising from some petty offices generally bestowed on scholars, he emerged from the distress in which he had hitherto been involved. The remainder of his College life is not marked by any peculiar incidents; he obtained the usual honours with which the policy of the University rewards industry and talents, and he is said to have made some progress in reading the laborious course which is prescribed for fellowship Candidates; but whether disgusted with the drudgery, or deterred by the magnitude of the undertaking, he soon desisted from College pursuits, and turned his attention to the Bar.

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Previously to his becoming a student in the Inns Court, London, Mr. Curran married a lady of his own country. This match appears to have been founded in inclination, for she did not bring him a fortune to compensate the inconveniences unavoidably attending such a premature connexion. Of the means by which he supported himself and wife during his studies in England, and afterwards to defray the expence of his call to the bar, nothing certain is known; it is natural to suppose, that with talents like his, in such a place as London, it would not be difficult to procure a livelihood by his literary exertions. But whatever might have been the mode by which his finances were supplied, it is certain that when he first came to the bar, he was in great poverty — He resided in Kevin-street, Dublin, a place only occupied by the lowest class of people, and which, in point of *gentility*, is on a level with the least reputable part of Westminster.

Mrs. Curran had now brought him a child; and being unable to indulge in the practice so common in great cities, of sending the children out to be nursed, she was obliged to undergo the labour of discharging at once the duties of nurse, housewife, and cook!

About this time, Mr. Curran became a member of a convivial society, originally formed by young lawyers, called *the Monks of the Screw*—they were poor, but merry; the object of their meetings was to forget, in what is called "good fellowship," the cares and crosses of life. The *devotion* of these Monks, however, was promoted by an humbler liquor than the juice of the grape, and their *temple* was nothing more than an *upper* room in a Kevin-street ale-house!—Poor as such a society must have been, the circumstances of Mr. Curran were so humble, that they were better'd by his connexion even with it.—As the Club affected to be select, it became at length necessary, that they should have an apartment to themselves; they therefore engaged one at a certain rent, and Mr. Curran was complimented with the use of it, for the residence of himself and family, except only during those evenings when the Club met—He must have been poor indeed who lodged in such a mansion!

Mr. Curran, however, was not the only man of talents, who, at that time, belonged to this society, and who arose

rose to eminence—The present Chief Baron of the Irish Exchequer, Lord Yelverton, the early and intimate friend of Mr. Curran, was one of its original members. Tho' more fortunate in his *political* pursuits, the connexion first formed and cemented between them in their early years, has continued thro' every vicissitude of succeeding life.

That learning and talents are often enabled to raise themselves into notice, without the fortunate co-operation of extrinsic circumstances, is an observation which has been often exemplified in every profession; but, perhaps, more frequently in the law than any other — Our young barrister, with all his capabilities, however, remained entirely unnoticed at the bar — The attention of the public was at length turned towards him in rather a singular way.

He had been engaged as agent by one of the candidates at a contested election, and, in the course of the poll, it became necessary for him to make objections to a vote proffered by the adverse party, which he did in that strong, sarcastic manner, for which he is so remarkable. His antagonist, a man of overbearing manners, felt the pungency of the barrister's wit, and not recognising, under a shabby coat, and rather a mean appearance, he applied to him some very gross epithets—With more spirit than discretion, Mr. Curran leaped from his seat, seized him by the collar, and would have struck him, but for the interposition of the by-standers; but he disclosed his mind and character in some very *pithy* sentences — The gentleman not only acknowledged his mistake, but generously granted him his friendship, and was of essential service to his future pursuits in the line of his profession.

From this period, Mr. Curran began to rise rapidly—Within less than six months, he quitted his gratuitous lodgings in Kevin-street, and removed nearer to the more reputable part of the town. Mrs. Curran no longer dishonoured her lord's circumstances, by appearing in the discharge of those domestic offices which are usually performed by deputy—nay, in less than a year, the rising prosperity of the family was visible in the luxury of a one-horse chair! — Merit was now finding its proper level

level, and, in this instance at least, we do not behold a great genius struggling with adversity, or sullied, in the estimation of vulgar minds, by undeserved poverty.

Mr. Curran's rise must have been rapid indeed, for, in the year 1784, we find him seated in the House of Commons,* where he seconded, with sportive humour, or sarcastic wit, every effort of the minority, or popular party, for the civil and religious emancipation of their country.

During the interesting period in which Mr. Fitzgibbon filled the office of Attorney General, Mr. Curran was one of the leaders of opposition; of course, he came into frequent collision with that dogmatical and haughty man. The high tone of language with which the Attorney General endeavoured to overbear his political opponents, was more frequently combated by the wit, than by the arguments of Mr. Curran. If in this mode of warfare, he did not always repel the blow, he at least evaded its force; and tho' he could not, on every occasion, boast of victory, he escaped defeat—In one of these contests, Mr. Curran sent home his wit, his ridicule, and his irony in so sharp a stile, that it produced a challenge—They fought in the Phenix Park, and even there Mr. C. could not forbear his jokes, to the amusement of the seconds; as to his antagonist, he never was of a laughable humour upon any occasion — Luckily they fired without effect, and there was no blood shed—The Fates, it seems, had decreed, that Mr. F. should not die in the field of battle

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While Mr. Curran was continuing to be successful in his profession, he did not suffer any opportunities of enjoying pleasure to pass him — His company was eagerly sought for in every company, and, by his never-failing fund of wit, he generally kept the table in a roar till the "envious sun peep'd in at the widows"—He was indeed a man of uncommon gaity, he possessed an exquisite ear for music, and being no ordinary performer on the Forte Piano, it was not strange that Mrs. Billington, who has cap-

* He had now received a *silk gown* from the Duke of Portland, who, at that time, was of the Whig party—but, terrified by the volcano that burst out in France, and captivated with Mr. Burke's tropes and figures, some time after, he fled from the Whig standard, and took shelter under Mr. Pitt's Church and King system on the Treasury bench, which, if not always the post honour, is always the post of profit.

captivated all the world by her magical powers, should for a time enchant Mr. C.————

It has already been observed, that, in his parliamentary character, Mr. Curran has always been attached to the popular cause. Indeed, from his first outset in life, he has been a steady friend to the legislative independence, to the free commerce, and a reform in the representation of Ireland. He uniformly declared against Mr. Pitt's crusade against France; and, with unremitted vigour, he opposed the fire and sword system against Ireland — Finding the inefficacy of his efforts, he withdrew, along with Mr. Grattan and some others, from the House of Commons, and has since been known to the public only as an Advocate. In this capacity, he has defended, with unrivall'd talents, many of his countrymen, who, instead of glorying in a *Revolution*, have unfortuately found themselves involved in all the horrors of a *Rebellion*.

As a *Lawyer*, Mr. Curran has not particularly distinguished himself; in this respect, he stands only on an equality with his brethren — it is as an *Advocate* that he outstrips his competitors — In this character he has not his equal in the three kingdoms. With Mr. Erskine he has been compared; but, in the opinion of many judges, who have attentively considered the merits of both, the latter holds only the second place.

Mr. Erskine is an acute, grave, laborious, and frequently an eloquent pleader; he turns the bright side of his client's case to full view, urges its strong parts with the force of a masculine understanding, and covers its weakness with very ingenious sophistry; but the jury still remember that Mr. Erskine is an advocate, and are on their guard against his arts. — Mr. Curran, while he displays as much acuteness as Mr. E. gets nearer to the hearts and passions of his auditors; and, by the ardour and animation of an eloquence neither forced nor fictitious, excludes every feeling and every thought but those which he wishes to excite. In the examination of witnesses also, Mr. Curran is eminently powerful. In his manner, he resembles Mr. Garrow, but excels even that gentleman in probing a rotten cause to the bottom, in eliciting truth from prevarication, and touching the secret strings that actuate the human heart.

of

Of all the orators of the present day, Mr. Curran is thought to have the greatest resemblance to Mr. Sheridan (both Irishmen), considering the one in Parliament, the other before a Jury. They have nearly the same flow of ideas, and similar flights of genius, alternately witty and pathetic, ironical and majestic. Whatever may have been the original or the local merit of *Demosthenes* and *Cicero*, we do not now feel ourselves agitated by their orations; even in their best translations, their language is faint and uninteresting, when compared with *Curran* and *Sheridan*—the one, when he describes the miseries of the persecuted Irish—the other, when he paints the sufferings of the oppressed Hindoos.

But Mr. Curran's parliamentary speeches seldom possess the excellence which marks his professional defences. They display much lesss of the *mens divinior*—they are irregular and desultory, and seem to be rather the play of his mind, than its serious exertions. They, however, abound with admirable strokes of sarcastic humour; and tho' they assist but little in guiding decision, yet produce a good effect, by holding up venality and corruption to public detestation.

Of Classical learning Mr. Curran seems to have early laid in a good store; his allusions to the Roman poets are frequent, and his quotations from them are prompt and happy. It is a curious circumstance, that to study the Latin authors, and to commit to memory their remarkable passages, formed a part of Mr. Curran's preparation for the bar; and that he continues from his experience of its utility, to recommend this practice to the student of law.

Deceived by his *tout ensemble*, several young Englishmen, who thought it a duty incumbent upon them to take every opportunity of quizzing the Paddies, have ventured to break their Birmingham wit upon our hero—but they soon found that they had "caught a tartar;"—his keen sarcastic wit and expressive gestures, turned the laugh against themselves, and made them quit the field with disgrace.

The people of England in general, altho' situated almost within sight of Ireland, are wonderfully ignorant of that country, and have the most absurd notions of the size, strength, and manners of her inhabitants. Accus-

customed to contemn the Irish, and blinded by pride and prejudice, Englishmen will not believe that any man can be born in Ireland with a capacity above the rank of a drayman or a hay-maker. And when such men as are named below,* are mentioned as being natives of Ireland, *John Bull* is surprized and incredulous, for he thinks nobody with brains can possibly be born out of Old England!

The English, by the superiority of their wealth and power, have contrived to throw the peculiarity of blundering on a people, who have been rendered unfortunate by their subjection to English impolicy.† Ireland, from her geographical situation, the fertility of her soil, and the number of her inhabitants, has been emphatically called "the right arm of England"—yet this fine country, thro' a most mean and ungrateful jealousy, has been degraded into a province, and her sons stigmatized as a nation of blunderers!—Like the Helots of Greece, they are first enslaved, and then despised! — A blundering Irishman is a constant fund of amusement on the English stage—many a play would be *damn'd* but for an Irishman's mistakes — and many a paragraph-writer would starve in London, but for his far-fetch'd witticisms on the unfortunate natives of Ireland!

* Beſides a long liſt of Stateſmen and Warriors driven to foreign countries by reſtrictive laws, Ireland can boaſt of her Uſher, Boyle, Denham, Congreve, Molyneux, Farquhar, Steele, Sloane, Berkley, Orrery, Parnel, Swift, Helſham, Robinſon, Goldſmith, Johnſon (Chryſal), Sterne, Tickel, Brooke, two Lelands, Hamilton, Kirwan, Bickerſtaff, Macklin, Malone, Mrs. Sheridan, two Sheridans, Griffith, Courtnay, Burgh, Burke, Flood, Grattan, Curran, and others—What country in the world, of the ſame extent, can produce ſuch a conſtellation of Genius? —— And yet this is the deſpiſed nation!

* A late writer has defined a blunder to be "a laughable confuſion of ideas." — We could, if this was a proper place, give many inſtances of Engliſhmen endeavouring to converſe in French, and of French in Engliſh, making the moſt ridiculous miſtakes, owing to their ignorance of the idiom and genius of the language in which they attempted to ſpeak—Engliſh is not the mother tongue of an Iriſhman; he has to acquire it thro' many difficulties and diſcouragements; deprived of every advantage of education, poor, illiterate, and depreſſed, when *Paddy Bull* happens to confound words or meanings, his *good-natured* brother *John Bull* burſts into a horſe laugh, and ſets it down to a natural propenſity.—Where are there ſuch groſs blunderers as the cockneys of London? with this difference, that the miſtakes of a Londoner are flat and ſtupid; thoſe of an Iriſhman are lively and laughable.—Who wrote purer Engliſh than Swift, Goldſmith, Burke, &c.—Who ſpeaks it with greater energy and elegance than Sheridan, Grattan, Curran, &c.

With respect to person, Mr. Curran, like Mr. Grattan, is not much indebted to Nature. His stature is low, and his whole appearance is far from prepossessing. He has, however, an eye which emits the fire of genius, and is admirably calculated to transmit either the scintillations of fancy, or that deep and touching pathos of the heart, which he not only feels himself, but can so powerfully excite in others. Of dress, he is remarkably, perhaps, culpably negligent; he has often played Cicero in the Senate in the garb of Scrub! — His negligence in this respect, has frequently led him into street adventures, sometimes ridiculous, and sometimes, it is said, rather unsuitable to the dignity of a Gentlemen—but Mr. C. is exceedingly fond of whatever is humorous—He tells several stories of himself with infinite spirit, much to the amusement of the company; and all the high wits, and all the low wits of the city, can repeat a deal of funny sayings and doings of the great Orator Curran.

THE

TRIAL

OF

Archibald Hamilton Rowan, Esq.

FOR

THE PUBLICATION OF A LIBEL.

IN the latter end of December 1792, Mr. Rowan was arrested by virtue of Mr. Justice Downes's warrant, on a charge of distributing a seditious paper.—Mr. Justice Downes having assured Mr. Rowan, that the examinations, upon which the warrant was grounded, would be returned to the Clerk of the Crown, and that they would, he supposed, be in course by him laid before the next Term Grand Jury, Mr. Rowan, instead of going to jail, in pursuance of his own opinion, followed the advice of his law friends, and gave bail for his appearance in the King's Bench, to answer such charges as should be there made against him. During the succeeding Hilary Term, Mr. Rowan daily attended in the King's Bench, and on the last day of that term, finding that no examinations had been laid before the Grand Jury against him, he applied, by Counsel, to the Court, that the examinations should be forthwith returned, particularly as Mr. Attorney General had, in the course of the Term, filed two informations *ex officio* against him, the one for the same alledged offence of distributing a seditious paper, and the other for a seditious conspiracy; whereupon, Mr. Justice Downes, who was on the Bench, having asserted that he had on the first day of the Term, returned the examinations to the Clerk of the Crown, and the Clerk of the Crown having said, that from the multiplicity of examinations returned to him on the first day of the term, in the course of the term, and even on that day, he had not had time to look them over, the Court refused to make any order. Mr. Rowan daily attended the King's Bench on the following Easter Term, until the

same was nearly spent, and finding that no bills were sent up to the Grand Jury against him, he moved the Court, by Counsel, that the recognizance entered into by him and his bail, should be vacated, and publicly declared, that if this motion was not granted, he would surrender himself in discharge of his bail. The Attorney General consenting, the motion was granted, and the recognizance was vacated.

In the above mentioned Easter Term, a motion was made, on behalf of Mr. Rowan, to fix certain days for trial of the informations filed *ex officio* against him, and the Attorney General having agreed to the appointment of two days in the ensuing Trinity Term, *viz.* the 3d and 7th days of May, those days were accordingly appointed for the purpose. However, in the Easter vacation, the Attorney General served a notice on Mr. Rowan, stating that he would not proceed to trial on those days, but he would apply to the Court to appoint other days, grounded on an affidavit to be filed, of which notice would be given; nothing was done upon this notice, and no affidavit was filed or motion made thereon, and the *venire*, the process necessary for impannelling juries on the days appointed, having been, after being issued, kept by Mr. Kemmis, the Crown Solicitor, instead of being delivered to the Sheriff, a motion was made, on behalf of Mr. Rowan, in the last Trinity Term, that the *venire* should be delivered to the proper officer, in order, that the trials might be had on the days appointed, in case the Court should not grant any motion the Attorney General might make for postponing the trials. This motion was opposed by the Attorney General—he declared, that there was error in the information for distributing a seditious paper.—Mr. Rowan offered to agree to an immediate amendment of the Information, or that a fresh one should be filed and pleaded to *instanter*, or that he would release all errors;—all these offers were severally refused. The object of the Attorney General appeared to be to postpone the trials, and though only one of the informations was stated to be informal, yet the day appointed for the trial of the other, which was supposed to be formal, passed away without trial, equally with the day appointed for the the trial of the one which was stated to be informal. The Attorney General afterwards withdrew the information stated to have been informal, and filed another in the stead thereof. Many of Mr. Rowan's friends suspected, that the motive for postponing the trials was the expectation of having, under the shrievalty of Mr. Giffard, juries more favourable to government prosecutions, than they could entertain any hopes of having during the shrievalty of Mr. Hutton. In Michelmas Term last, the Attorney General applied to the Court, that a day should be appointed for the trial of the infor-

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mation for distributing a seditious paper; the Court would not appoint a day in that Term, but appointed a day for the trial of that information in Hilary Term following.

The following Information was filed by his Majesty's Attorney General, *ex officio*, against Arch. H. Rowan, Esq. *viz.*

KING's BENCH.

Of *Trinity Term*, in the 33d year of the Reign of our Sovereign Lord GEORGE THE THIRD, now King of Great Britain, and so forth, and in the year of our Lord 1793.

County of the City of Dublin, } BE IT REMEMBERED, That
to wit, } the Right Hon. Arthur Wolfe, Attorney General of our present Sovereign Lord the King, who for our said Lord the King prosecutes in this behalf, in his proper person comes into the Court of our said Lord the King, before the King himself, at the city of Dublin, in the county of the said city, on the 8th day of June in this same term, and for our said Lord the King gives the court here to understand and be informed, that Archibald Hamilton Rowan of the city of Dublin, Esquire, being a person of a wicked and turbulent disposition, and maliciously designing and intending to excite and diffuse amongst the subjects of this realm of Ireland, discontents, jealousies, and suspicions of our said Lord the King and his government, and disaffection and disloyalty to the person and government of our said Lord the King, and to raise very dangerous seditions and tumults within this kingdom of Ireland; and to draw the government of this kingdom into great scandal, infamy, and disgrace and to incite the subjects of our said Lord the King to attempt by force and violence, and with arms, to make alterations in the Government, State, and constitution of this kingdom, and to incite his Majesty's said subjects to tumult and anarchy, and to overturn the established constitution of this kingdom, and to overawe and intimidate the legislature of this kingdom, by an armed force, on the 16th day of December, in the 33d year of the reign of our said present Sovereign Lord George the Third by the grace of God of Great Britain, France, and Ireland, King, defender of the faith, and so forth, with force and arms at Dublin aforesaid, to wit, in the parish and ward of Saint Michael the Archangel, and in the county of the said city, wickedly, maliciously, and seditiously, did publish, and cause and procure to be published, a certain false, wicked, malicious, scandalous, and seditious libel, of and concerning the government, state, and constitution of this kingdom, according to the tenor and effect following, that is to say:

The

The SOCIETY OF UNITED IRISHMEN, *Dublin, to the* VOLUNTEERS OF IRELAND.

WM. DRENNAN, *Chairman*—ARCH. H. ROWAN, *Secretary.*

" *Citizen Soldiers,*

"YOU first took up arms to protect your country from foreign enemies and from domestic disturbance; for the same purposes it now becomes necessary that you should resume them; a proclamation has been issued in England for embodying the Militia, and a proclamation has been issued by the Lord Lieutenant and Council in Ireland, [meaning a proclamation which issued under the great Seal of the kingdom of Ireland, the 8th day of December, 1792] for repressing all seditious associations; in consequence of both these proclamations it is reasonable to apprehend danger from abroad and danger at home, for whence but from apprehended danger are these menacing preparations for war drawn through the streets of this capital [meaning the city of Dublin] or whence if not to create that internal commotion which was not found, to shake that credit which was not affected, to blast that Volunteer honour which was hitherto inviolate, are those terrible suggestions and rumours and whispers that meet us at every corner, and agitate at least our old men, our women, and children; whatever be the motive, or from whatever quarter it arises, alarm has arisen; and you Volunteers of Ireland, are therefore summoned to arms at the instance of government as well as by the responsibility attached to your character, and the permanent obligations of your institution. We will not at this day condescend to quote authorities for the right of having and of using arms, but we will cry aloud, even amidst the storm raised by the witchcraft of a proclamation, that to your formation was owing the peace and protection of this island, to your relaxation has been owing its relapse into impotence and insignificance, to your renovation must be owing its future freedom and its present tranquillity; you are therefore summoned to arms, in order to preserve your country in that guarded quiet which may secure it from external hostility, and to maintain that internal regimen throughout the land, which superseding a notorious Police or a suspected Militia, may preserve the blessings of peace by a vigilant preparation for war.—Citizen soldiers, to arms, take up the shield of freedom and the pledges of peace—peace, the motive and end of your virtuous institution—war, an occasional duty, ought never to be made an occupation; every man should become a soldier in defence of his rights; no man ought to continue a soldier for offending the rights of others; the sacrifice of life in the service of our country is a duty much too honourable to be intrusted to mercenaries, and at this time,

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when your country has, by public authority, been declared in danger, we conjure you by your interest, your duty, and your glory, to stand to your arms, and in spite of a police, in spite of a fensible militia, in virtue of two proclamations, to maintain good order in your vicinage, and tranquility in Ireland; it is only by the military array of men in whom they confide, whom they have been accustomed to revere as the guardians of domestic peace, the protectors of their liberties and lives, that the present agitation of the people can be stilled, that tumult and licentiousness can be repressed, obedience secured to existing law, and a calm confidence diffused through the public mind in the speedy resurrection of a free Constitution, [meaning that the people of Ireland had not at the time of the publishing aforesaid a free Constitution] of Liberty and Equality, words which we use for an opportunity of repelling calumny, and of saying, that by liberty we never understood unlimited freedom, nor by equality the leveling of property or the destruction of subordination; this is a calumny invented by that faction, or that gang, which misrepresents the King to the people, and the people to the King, traduces one half of the nation to cajole the other, and by keeping up distrust and division, wishes to continue the proud arbitrators of the fortune and fate of Ireland; liberty is the exercise of all our rights, natural and political, secured to us and our posterity by a real representation of the people; and equality is the extension of the constituent to the fullest dimensions of the constitution, of the elective franchise to the whole body of the people, to the end that government, which is collective power, may be guided by collective will, and that legislation may originate from public reason, keep pace with public improvement, and terminate in public happiness. If our Constitution be imperfect, nothing but a reform in the representation will rectify its abuses; if it be perfect, nothingbut the same reform will perpetuate its blessings. We now address you as citizens, for to be citizens you became soldiers, nor can we help wishing that all soldiers partaking the passions and interest of the people would remember, that they were once citizens, that seduction made them soldiers, but nature made them men. We address you without any authority save that of reason, and if we obtain the coincidence of public opinion, it is neither by force nor stratagem, for we have no power to terrify, no artifice to cajole, no fund to seduce; here we sit without mace or beadle, neither a mystery nor a craft, nor a corporation; in four words lies all our power—universal emancipation and representative legislature—yet we are confident that on the pivot of this principle, a convention, still less a society, still less a single man, will be able first to move and then to raise the world: we therefore wish for Catholic

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emancipation without any modification, but still we consider this enfranchisement as merely the portal to the Temple of Freedom; wide at this entrance is, wide enough to admit three millions, it is narrow when compared to the capacity and comprehension of our beloved principle, which takes in every individual of the Irish nation, casts an equal eye over the whole island, embraces all that think, and feels for all that suffer; the Catholic cause is subordinate to our cause, and included in it; for, as United Irishmen, we adhere to no sect, but to Society, to no cause, but Christianity—to no party, but the whole people. In the sincerity of our souls do we desire Catholic emancipation: but were it obtained to-morrow, to-morrow would we go on as we do to-day, in the pursuit of that reform, which would still be wanting to ratify their liberties as well as our own. For both these purposes it appears necessary, that provincial conventions should assemble preparatory to the convention of the Protestant people; the delegates of the Catholic body are not justified in communicating with individuals or even bodies of inferior authority, and therefore an assembly of a similiar nature and organization is necessary to establish an intercourse of sentiments, an uniformity of conduct, an united cause, and an united nation; if a convention on the one part does not soon follow, and is not soon connected with that on the other, the common cause will split into partial interests, the people will relapse into inattention and inertness, the union of affection and exertion will dissolve, and too probably some local insurrections, instigated by the malignity of our common enemy, may commit the character and risk the tranquillity of the island, which can be obviated only by an assembly arising from, assimilated with the people, and whose spirit may be, as it were, knit with the soul of the nation; unless the sense of the Protestant people be on their part as fairly collected and as judiciously directed, unless individual exertion consolidates into collective strength, unless the particles unite into one mass, we may perhaps serve some person or some party for a little, but the public not at all; the nation is neither insolent, nor rebellious, nor seditious; while it knows its rights, it is unwilling to manifest its powers; it would rather supplicate administration to anticipate revolution, by well-timed reform, and to save their country in mercy to themselves. The 15th of February approaches, a day ever memorable in the annals of this country as the birth-day of *new* Ireland; let parochial meetings be held as soon as possible, let each parish return delegates, let the sense of Ulster be again declared from Dungannon on a day auspicious to union, peace and freedom, and the spirit of the North will again become the spirit of the Nation. The civil assembly ought to claim the attendance of the military associations

tions, and we have addressed you, citizen soldiers, on this subject from the belief, that your body uniting conviction with zeal, and zeal with activity, may have much influence over your countrymen, your relations and friends. We offer only a general outline to the public, and meaning to address Ireland, presume not at present to fill up the plan or pre occupy the mode of its execution, we have thought it our duty to speak.—Answer us by actions; you have taken time for consideration; fourteen long years have elapsed since the rise of our associations; and, in 1782, did you imagine that in 1792 this nation would still remain unrepresented? How many nations in this interval have gotten the start of Ireland? How many of your countrymen have sunk into the grave?"——In contempt of our said Lord the King, in open violation of the laws of this kingdom, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

WHEREUPON the said Attorney General of our said Lord the King, who for our said Lord the King in this behalf prosecutes, prays the consideration of the court here in the premisses, that due process of law may be awarded against him the said Archibald Hamilton Rowan in this behalf, to make him answer to our said Lord the King touching and concerning the premisses aforesaid. *ARTHUR WOLFE.* *

THO. KEMMIS, Attorney.

To this information, Mr. Rowan appeared by Matt. Dowling, Gent. his Attorney, and pleaded the general issue Not Guilty. And the Court having appointed Wednesday the 29th day of January 1894 for the trial of said issue, the Court then met accordingly; and the jury being impannelled and sworn, the cause was thus opened by the Attorney General:—

My Lord, and Gentlemen of the Jury,

IN this case, between the KING and ARCHIBALD HAMILTON ROWAN, Esq. it is my duty to prosecute on behalf of the Crown. The traverser in this case, gentlemen, stands accused upon an information filed *ex officio*, by the King's Attorney General, for publishing a seditious libel. It is my duty to lay the facts of this case before you—it will be the duty of another of his Majesty's servants to observe upon the evidence. I shall state the nature of the charge and the questions you are to try: I will then state such circumstances as are necessary to be taken into your consideration, for the purpose of understanding and expounding that paper which the information charges to be a malicious

* Then Attorney General, afterwards Lord Kilwarden and Chief Justice of the King's Bench—He was murdered by the mob in Thomas-street in the insurrection of the 23d of July 1803.

licious and seditious libel. The information charges, that Archibald Hamilton Rowan, maliciously designing and intending to excite and diffuse among the subjects of this realm discontents, disaffection and disloyalty to the king and government, and to raise very dangerous seditions and tumults, and to draw the government into scandal, infamy and disgrace, and to incite the subjects to attempt, by force and with arms, to make alterations in the government, and to excite the subjects to anarchy to overturn the constitution and overawe the legislature of the kingdom, did publish the libel set forth in the information. In this case, therefore, it will be for you, gentlemen, upon the evidence which shall be laid before you, to determine, whether the traverser has been the publisher of that paper or not. I shall, in the course of what I offer the court and to you, read the very libel itself, and make such observations as occur to me to be proper in the present state of the business. Previous, however, to my doing so, I will take the liberty, gentlemen, of stating to you some facts and circumstances that appear to me deserving of attention in the investigation of the matter before you; and in doing so, I shall carefully avoid mentioning many facts and circumstances which these disgraceful times have furnished, that might lead your verdict one way or the other. I shall not attempt to excite your passions. I am happy at length that this case has come before an impartial jury. It has long been the desire of every good man that this matter should come to trial before that constitutional tribunal who stand arbiters in this case, to protect the accused against the power of the crown; not resembling any of those prosecutions which the turbulence of former times have excited, you are assembled with that coolness which the solemnity of the occasion requires, to determine whether Mr. Rowan be guilty, criminally, of the offence charged against him. Take the libel into your consideration, and determine, as the law now allows you to do, whether it be a libelous publication, tending to excite sedition, to overawe the government; or tending to produce any of the effects imputed to it. I shall now proceed to state a few facts which I said it was my duty to do.

I shall call your attention to the history of the times about which this libel was published:—No man, let his situation be what it may, can be too cautious in uttering what ought not to be said, which might influence your judgment upon your oaths; and in that office which I hold, which is the office of the people, as well as of the crown, it is more than a common duty to take care not to step beyond that line which leads to common justice. I am warranted by the authority of a court of justice, by the King's Bench in England; by the opinion of a Judge of as much spirit and independence as any man, I allude to the case of the

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printer of the Morning Chronicle, in which Lord Kenyon informs the jury, That it is necessary, in cases of this kind, to attend to the circumstances and history of the times in which the libel was published. They tend to explain the motives which induced the publication, and the meaning of the libel itself.—He says it is impossible for the court or a jury to shut their ears against the history of the times. Besides that common principle, I am the more justifiable in what I shall state, because the libel charged comes from that body of men who have constituted themselves by the name of *The Society of United Irishmen in Dublin*. From the time of the restoration of our constitution—from the year 1784 to the year 1792—this country advanced in prosperity with a regular progress and gradation. The agriculture, commerce and police improved;—the civilization of the country proceeded uniformly from year to year;—the commonalty began to enjoy blessings they had been strangers to—ships crouded in our harbours—commerce occupied our ports—culture in our fields, and peace and happiness every where prevailed. The French revolution took place, when there were found many men, who from situation, from circumstances, from ambition, were desirous of commotion. Clubs were formed in the metropolis with the avowed intention of improving the constitution, for they must assume some pretext, but with a view, I fear, under colour of that, to overturn it. They subsisted here in this town under different names, till at length in 1791, they formed themselves into a club, called *the Society of United Irishmen*, consisting at first of a small number, composed of various classes of men, certainly some of them of the learned professions, some of the lowest members in the community. In 1791 they continued to pour upon the public daily publications, setting forth the distresses of the people, teaching them to be discontented with their situation and the government of the country.

Things thus proceeded down to the latter end of the year 1792. In the latter end of Autumn, 1792, the allied armies retired from the kingdom of France: the convention of that kingdom began to hold a high language, and to talk of oversetting the government of Kings. An attack was made upon regal authority, a spirit was stirred among those desirous of such schemes—it seemed to inspire them. There was a talk of overturning the government of king, lords, and commons—success at the same time seemed to crown the arms of the French; they advanced beyond their own territory, and menaced an attack upon the United States of Holland. In this situation of things, there did pervade a gloomy apprehension for the safety of the country. Emissaries from France were spread throughout Europe; a new array of a new corps was made in Dublin

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in the noon day, decorated with emblems of sedition; they were to parade in your streets, and to be marshalled in your squares. The Volunteers of Ireland, a name revered by this country, and by every good man loving the Constitution, that sacred name was made a cloak for arming a banditti, that arraigned the Constitution and degraded the name of Volunteer; a National Guard was formed upon the plan of those in Paris. It is notorious to every man in Ireland, to every man in the British dominions, that such men assembled with clothing of a particular uniform, with emblems of harps divested of the royal crown; every thing was undertaken to spread the spirit which animated themselves, and can any man forget the situat on of Dublin in September, October, and November, 1792, which caused apprehensions in those who were well affected to the government and tranquility of the country? Can any man forget the state of the nation at this period? Her credit was shaken; good people stood appalled; and those loving peace stood astonished at the languidness of government.

At length, that Govevnment came forward which had never slept, but had been proceeding with mildness, determined not to go forth to action, nor have recourse to any severer remedies until every man in the state, who had a moment's reflection, must see the necessity o. exertion. The troops are summoned to meet, the guards are summoned to assemble, and the first battalion of National Guards were to have paraded, clothed like Frenchmen. The night before the Lord Lieutenant had summoned the Council of the Kingdom; upon that night, a proclamation i sued, stating that there were intentions to assemble men in arms, with seditious signs, and apprehending danger from their assembling, it prohibited their meeting. The proclamation issued on a Saturday night, and it produced that satisfaction which all good men desirous of order seek to enjoy, and they felt once more the pleasurable assurance that they had a government. Appalled by this proclamation, the corps did not meet on the 8th of December as it was intended, though some few were seen dressed in the National Guard uniform, parading the streets with a mob, crouding at their heels; but however nothing followed. They were seen, and blessed be God, they were seen no more. This proclamation, having for its object the preservation of the peace of this kingdom and the city in particular, mildly and coolly cautioning all men against those measures, held out the consequences that must necessarily follow, if they did not obey. A proclamation which received the applause of the great and good, of the lovers of Society, and of every man not lost to the sense of order and the constitution; but odious to every man who was attached to the Society of United Irishmen, and whose views

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correspond with it. While I speak of that Society, let me not be understood as imputing to every man who is in it, those illegal motives which I impute to the Society in general; there might have been in it no doubt many well meaning persons, for there were men picked up industriously to lend their names, in the streets, in the lanes, in the markets, in the highways, and in the fields, even the rich and industrious grazier was procured to lend his name. To the good, this proclamation gave pleasure and satisfaction, to the bad it became odious and detestable; and they accordingly formed the intention of bringing the government into disgrace for issuing that proclamation.

A few days after, I am not aware of the particular day, but a few days after the issuing the proclamation, the Society assembled; the proclamation was upon the 7th, the address I speak of was published the 16th of December. The meeting therefore must have been between the 7th and the 16th of December. The Society, I say, assembled, and they agreed upon a certain address to the Volunteers of Ireland, and Dr. Drennan is there stated to have been in the chair, and the traverser Secretary. At that meeting—at that meeting the address to the Volunteers was agreed upon, which is the libel charged against Mr. Rowan as being guilty of publishing it.—Under that address, this was to be done. The Volunteers of Dublin were to be called into action, and those papers were to be dispersed among them. For that purpose, the several Volunteer Corps at that time existing in Dublin, were summoned to assemble in a house in Cope-street, belonging to Pardon a fencing-master, upon the 16th of December. Accordingly upon that day, the several corps of Volunters did go with side arms to this fencing-school in Cope-street. The traverser was, I believe, at the head of one of these corps; another very celebrated name was at the head of another of them, James Napper Tandy. Who was at the head of the others I am not able to inform you. But in the afternoon of the 16th of December, several volunteers, with uniforms and side arms, assembled in the fencing-school, where there was a gallery, and into that gallery there was such public access that what passed below may be said to have passed in the face of the world; to such excess had those persons carried their designs as to expose them to open view, and if I state what is not true, there are 100 hundred persons in the Volunteer Corps of the City of Dublin, out of whom a multitude may be called to contradict me.—The corps, I say, assembled in that room. There stood in the middle of the room a table, and there was a vast number of printed papers brought in and placed on the table. The different corps entered into several resolutions, having taken into their wise consideration the proclamation issued by the Lord Lieu-

Lieutenant and Council; the necessity for issuing it is investigated; each of the corps took severally into their consideration the propriety of it, and next day published their different sentiments all expressive of disapprobation. So that it is manifest they were brought publicly together for a state purpose, and to debate a state matter. While these resolutions were in discussion, Mr. Tandy and Mr. Rowan were seen to take from the table the printed papers that lay upon it, and disperse them among the several volunteers who stood around them, and to hand them from the lower room to persons in the gallery, and to persons not in their confidence; they were handed up promiscuously to any man there, and to many persons in the streets that evening and the next day; they were flung out of the windows to the mob that stood round the room.

These, gentlemen, are the circumstances which preceded the publication of this paper by the traverser; it will be for you to consider with what view and purpose a paper like this was composed and thus dispersed. If you believe it was a candid and fair discussion upon constitutional subjects, or grievances real or supposed, you will not consider it as a libel; but if from internal evidence in the paper itself, and from the circumstances attending it, you believe it was no such thing, but that it was published with a view to raise discontents against the government—to disturb the people—to overawe the parliament, or any branch of the state, then you must find him guilty. You, gentlemen, will take the paper into your room with you; consider it coolly, and discharged from all you have heard abroad respecting it, and determine in your own minds, whether it be possible to give it any other construction than that which the information has ascribed to it. I will submit to you, gentlemen—to you alone I desire to submit the cool examination of that paper itself. It is impossible with all the ingenuity (and he who comes after me on the other side, has as much ingenuity as any man) to shew that it was not written for the purpose of overawing the Legislature, or to account for it in any other way.—[Here Mr. Attorney read the publication as set forth in the information, and charged to be libelous, accompanied with severe remarks on each sentence; after which he proceeded as follows:]—

"I have read it accurately—Gentlemen of the jury, it is for you to consider the whole of it, and determine whether it was published by Mr. Rowan, and whether, it be a libel or not?—If you should be of opinion that Mr. Rowan is guilty of publishing this paper, then you are to consider whether it is a libel or not?—Gentlemen, it is the peculiar felicity of this country, the great blessing of our Constitution, that we have a trial by jury; in France it is polluted; but it is the boast of our Constitution, that we have a trial by jury, and the great preserva-

servative of that blessing and of the Constitution itself, is the Liberty of the Press; that is the great bulwark of our free Constitution, we have a trial by jury, and of the Freedom of the Press you are the guardians. You, gentlemen, are by the Constitution appointed to decide upon all these questions touching the Freedom of the Press. The Freedom of the Press cannot be destroyed but in two ways, 1st, by the overweening power of the Crown, 2dly, by its own licentiousness corrupting the minds of the people; and when it is destroyed, then will our Constitution be at an end. While the Press is left open to cool and fair discussion upon legal and public topics of Grievance and Constitution, so long will the freedom of our Constitution endure, and whenever an attempt is made to controul it, you will step in and guard and protect it, as you would your property, your lives, and your liberties; you will secure it from licentiousness; if, thro' the timidity of a jury, licentiousness it is not punished, its freedom cannot exist. What does the paper which is the subject of this question purport to be? it looks for a reform of parliament, it calls to arms the citizens under pretence of supporting the government by resisting it, by speaking of grievances which cannot be endured, it is overawing the parliament. If such licentiousness be tolerated, then the Freedom of the Press will be destroyed. You, gentlemen, will consider whether this paper contains in itself internal evidence to shew, that the motives of its publication were not for the purpose of reasoning with the people, or for the necessary correction of any evil in the Constitution, but to excite sedition and tumult. If in that case you believe that Mr. Rowan published it, then you must find him guilty. If, on the other hand, you are of opinion, that this was a cool and dispassionate paper, reasoning with the people in a becoming manner, acknowledging the authority of the law, then you will acquit him. Further, let the tendency of the paper be what it may, if you are of opinion, he did not publish it, then you must acquit him. We will produce a witness to shew he published an individnal paper—we will prove that he took several others and dispersed them abroad—if you believe the evidence, it will be impossible but that you must be satisfied he is guilty.—Thus stands the evidence.

I have stated that the traverser was Secretary to the *United Irishmen*. It will be proved thus:—he published that paper; if he did, he acknowledged the contents of it to be true, and the paper states him to be Secretary of the Society. Gentlemen, such is the case as it appears to me on the part of the Crown. I will not pretend to anticipate what may be offered by the gentlemen on the other side. Two topics, however, have occured as likely to be introduced:—one is, the case of

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the Volunteers—the other, the functions of a jury under the late Act of Parliament. Upon the first, I have said abundance to satisfy you. I will suppose however, that this paper was addressed to the old volunteers: what then?—The tendency of the paper was to excite those volunteers to commit actions that would tarnish the honour acquired by their previous conduct. Let them shew that the proclamation (against which this was a counter-proclamation) went against the old volunteers—it meant no such thing—it describes them so and so. But there were among the old volunteers men actuated by new principles and new motives, that it became the duty of government to suppress them. For your sake they did so—no government should be influenced but by the prosperity of the whole state. But in what respect did these men resemble the old volunteers?—Not in a single feature; these men were assembled by the call of the *United Irishmen* in Back-lane; the ancient Volunteers were asembled by the call of Government and the Lord Lieutenant, who distributed arms among them from the arsenal, for the public defence; they added to these out of their own pockets whatever they thought necessary; they were collected to support that Constitution which is now sought to be overturned. Were these new volunteers of that description? Were they so formed? How were they equiped? The green cockade was adopted in the place of the black. I see no necessity for this; but fearful that men will have recourse to such topics to cajole you, I think it necessary to take notice of them. Secondly, as to the Act of Parliament within this kingdom, I am not aware that it operates here; but even by it, as it now stands, and I told you so before, you have an undoubted right to enter into the guilt or innocence of intention upon this occasion, as you would upon the trial of any other offence. Gentlemen, to you, and most willingly, I commit this case; I desire no more than that you will by your verdict vindicate the Freedom of the Press, and punish the licentiousness of it."

EVIDENCE *on the Part of the* CROWN.

John Lyster deposed, That on Sunday forenoon the 16th of December, 1792, he happened to pass thro' Cope-street (Dublin), and perceiving a great croud in the fencing-school of one Pardon, he went in—was told by Mr. Rowan, that no one with coloured clothes could be there, but was shewn a gallery, to which he went—thought the assembly consisted of about one or two hundred persons, some of whom were dressed in the old, others in the new Volunteer uniform—among those in the room were Messrs. Rowan, Tandy, and Kenny, whom he had known before—there was a table in the room, on which were

a great many printed papers—a bundle of those papers was taken up by Mr. Rowan, and distributed among the persons below; some thrown up to the gallery, one of which he got; and some thrown out of the window to the mob—Mr. Rowan read a paper to the company, which, so far as he read, was precisely similar to the one he had—Soon after this, having occasion to call on Mr. Pollock (Attorney) for the purpose of transacting some private business, he was asked by him, if he had been at the meeting in Cope-street? To which he answered yes, and related the whole affair, and shewed the paper he had got—Mr. Kemmis, the Crown Solicitor, waited on him the next day, and was made acquainted with all the particulars of the meeting—since the deponent had obtained an Ensign's commission in the Army thro' the interest (as he said) of his relation Lady Hobart—This deponent was witness to two bonds given by his father to his brother, the one for 500l. the other for 300l.—the bonds were put in suit—the signatures of his father were denied—he was, as a subscribing witness, sworn on the trial—the jury could not agree, and there was no verdict—the case was referred, and the Arbitrators awarded only 200l. — Deponent took the charge of one Peter Hamilton, a lunatic—went with him to England, and came back again—during his having the custody of the lunatic, he obtained from him a note for 150l.—he had brought suit on the note—after the death of the lunatic, his executors had filed a bill in Chancery to be relieved from the note—he had not yet recovered the money.

Wm. Morton's testimony relative to the meeting in Cope-street, was nearly similar to that of John Lyster's, but did not prove a publication by the Defendant.

EVIDENCE *on Behalf of the* TRAVERSER.

Francis Blake said, he could not positively say that Lyster was not to be credited on oath, but "he should hesitate, he should doubt."

John Smith knew not much of Lyster, but from what he did know, he should give very little credit to any thing he should say, *even on oath.*

Mary Hatchell—"Lyster is not be credited on oath."

Here the testimony closed.

A few moments before the Defendant's Counsel rose, a guard of soldiers was brought into the Court-house by the Sheriff.

Mr. CURRAN for the Defendant. —— Gentlemen of the Jury,—When I consider the period at which this prosecution is brought forward; when I behold the *extraordinary safeguard* of armed soldiers resorted to, no doubt for the preservation of peace

peace and order: when I catch, as I cannot but do, the throb of public anxiety which beats from one end to the other of this hall; when I reflect on what may be the fate of a man of the most beloved personal character,* of one of the most respected families of our country; himself the only individual of that family, I may almost say of that country, who can look to that possible fate with unconcern? Feeling as I do all these impressions, it is in the honest simplicity of my heart I speak, when I say that I never rose in a Court of Justice with so much embarrassment, as upon this occasion.

If, gentlemen, I could entertain an hope of finding refuge for the disconcertion of my mind, in the perfect composure of yours; if I could suppose that those awful vicissitudes of human events, which have been stated or alluded to, could leave your judgments undisturbed and your hearts at ease, I know I should form a most erroneous opinion of your character: I entertain no such chimerical hopes; I form no such unworthy opinions; I expect not that your hearts can be more at ease than my own; I have no right to expect it; but I have a right to call upon you in the name of your Country, in the name of the living God, of whose eternal justice you are now administering that portion which dwells with us on this side of the grave, to discharge your breasts as far as you are able of every biass of prejudice or passion; that if my client is guilty of the offence charged upon him, you may give tranquility to the public by a firm verdict of conviction; or if he is innocent, by as firm a verdict of acquital; and that you will do this in defiance of the paltry artifices and senseless clamours that have been resorted to in order to bring him to his trial with anticipated conviction. And, gentlemen, I feel an additional necessity of thus conjuring you to be upon your guard, from the able and imposing statement which you have just heard on the part of the prosecution. I know well the virtues and the talents of the excellent person who conducts that prosecution; I know how

* Mr. Rowan is justly entitled to the character of a GENTLEMAN, a character often assumed, but often misunderstood.——Having received a liberal education, he passed a considerable time in Paris, where he associated with the most polished circles of that celebrated capital; he afterwards served several years as an officer in the British army.—To an ample fortune, a commanding figure, a marking countenance, and elegant accomplishments, were added a courage and a generosity that would have distinguished him even in the times of Chivalry. — Soon after his return to his native country, he rescued an innocent young woman from the snares of that hoary lecher Lord ———. This generous action, which was accompanied with some personal risque, brought Mr. Rowan into public notice and deserved popularity—but he soon found, that relieving distressed damsels was not the way to recommend him to the favour of the rulers of the nation; his exertions in another cause were unsuccessful; and his fair fortunes, and well-founded expectations, were shipwreck'd in the tempestuous and destructive ocean of Irish politics.

how much he would disdain to impose upon you by the trappings of office; but I also know how easily we mistake the lodgement which character and eloquence can make upon our feelings, for those impressions that reason and fact and proof only ought to work upon our understandings.

Perhaps, gentlemen, I shall act not unwisely in waving any further observation of this sort, and giving your minds an opportunity of growing cool and resuming themselves, by coming to a calm and uncoloured statement of mere facts, premising only to you, that I have it in the strictest injunction from my client, to defend him upon facts and evidence only, and to avail myself of no technical artifice or subtilty that could withdraw his cause from the test of that enquiry, which it is your province to exercise, and to which only he wishes to be indebted for an acquittal.

In the month of December 1792, Mr. Rowan was arrested on an information, charging him with the offence for which he is now on his trial. He was taken before an honourable personage now on that bench, and admitted to bail.

He remained a considerable time in this city, soliciting the threatened prosecution, and offering himself to a fair trial by a jury of his country; but it was not then thought fit to yield to that solicitation; nor has it now been thought proper to prosecute him in the ordinary way, by sending up a bill of indictment to a grand jury. I do not mean by this to say that informations *ex officio* are always oppressive or unjust; but I cannot but observe to you, that when a petty jury is called upon to try a charge not previously found by the grand inquest, and supported by the naked assertion only of the King's Prosecutor, that the accusation labours under a weakness of probability which it is difficult to assist. If the charge had no cause of dreading the light—if it was likely to find the sanction of a grand jury, it is not easy to account why it deserted the more usual, the more popular, and the more constitutional mode, and preferred to come forward in the ungracious form of *ex officio* information.

If such bill had been sent up and found, Mr. Rowan would have been tried at the next commission; but a speedy trial was not the wish of his prosecutors. An information was filed, and when he expected to be tried upon it, an error, it seems, was discovered in the record. Mr. Rowan offered to wave it, or consent to any amendment desired. No—that proposal could not be accepted—a trial must have followed. That information, therefore, was withdrawn, and a new one filed, that is, in fact, a third prosecution was instituted upon the same charge. This last was filed on the 8th day of last July. Gentlemen, these facts cannot fail of a due impression upon you. You will find a material part of your enquiry must be, whether Mr. Rowan is

pursued as a criminal or hunted down as a victim. It is not, therefore, by insinuation or circuity, but it is boldly and directly that I assert, that oppresssion has been intended and practised upon him, and by those facts which I have stated I am warranted in the assertion.

His demand, his intreaty to be tried was refused, and why? a hue and cry was to be raised against him; the sword was to be suspended over his head—some time was necessary for the public mind to become heated by the circulation of artful clamours of anarchy and rebellion; those same clamours, which with more probability, and not more success, had been circulated before through England and Scotland. In this country the causes and the swiftness of their progress were as obvious, as their folly has since become to every man of the smallest observation. I have been stopped myself, with,—"Good God, Sir, have you heard the news?—No Sir, what?—Why one French emissary was seen travelling through Connaught in a post chaise, and scattering from the windows as he passed little doses of political poison, made up in square bits of paper—another was actually surprised in the fact of seducing our good people from their allegiance, by discourses upon the indivisibility of French robbery and massacre, which he preached in the French language to a congregration of Irish peasants!"

Such are the bugbears and spectres to be raised to warrant the sacrifice of whatever little public spirit may remain amongst us; but time has also detected the imposture of these Cock-lane apparitions, and you cannot now, with your eyes open, give a verdict without asking your consciences this question; is this a fair and honest prosecution?—Is it brought forward with the single view of vindicating public justice, and promoting public good? And here let me remind you, that you are not convened to try the guilt of a libel, affecting the personal character of any private man; I know no case in which a jury ought to be more severe than when personal calumny is conveyed through a vehicle, which ought to be consecrated to public information; neither, on the other hand, can I conceive any case in which the firmness and the caution of a jury should be more exerted, than when a subject is prosecuted for a libel on the State. The peculiarity of the British Constitution, (to which in its fullest extent we have an undoubted right, however distant we may be from the actual enjoyment) and in which it surpasses every known government in Europe, is this; that its only professed object is the general good, and its only foundation the general will; hence the people have a right, acknowledged from time immemorial, fortified by a pile of statutes, and authenticated by a revolution that speaks louder than them all, to see whether abuses have been committed, and whether their properties

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and their liberties have been attended to as they ought to be. This is a kind of subject which I feel myself overawed when I approach; there are certain fundamental principles which nothing but necessity should expose to a public examination; they are pillars, the depth of whose foundation you cannot explore without endangering their strength; but let it be recollected, that the discussion of such topics should not be condemned in me, nor visited upon my client. The blame, if any there be, should rest only with those who have forced them into discussion. I say, therefore, it is the right of the people to keep an eternal watch upon the conduct of their rulers; and in order to that, the Freedom of the Press has been cherished by the law of England. In private defamation, let it never be tolerated; in wicked and wanton aspersion upon a good and honest administration, let it never be supported; not that a good government can be exposed to danger by groundless accusation, but because a bad government is sure to find in the detected falsehood of a licentious press, a security and a credit which it could never otherwise obtain.

——————I have said, that a good government cannot be endangered—I say so again, for whether it be good or bad, can never depend upon assertion; the question is decided by simple inspection—to try the tree look at its fruit; to judge of the government look at the people—What is the fruit of good government?—"The virtue and happiness of the people." Do four millions of people in this country gather those fruits from that government, to whose injured purity, to whose spotless virtue and violated honour, this seditious and atrocious libeller is to be immolated upon the altar of the Constitution? To you gentlemen of that jury, who are bound by the most sacred obligation to your Country and your God, to speak nothing but the truth, I put the question—do they gather these fruits, are they orderly, industrious, religious and contented:—do you find them free from bigotry and ignorance, those inseparable concomitants of systematic oppression, or to try them by a test as unerring as any of the former, are they united? The period has now elapsed in which considerations of this extent would have been deemed improper to a jury; happily for these countries, the legislature of each has lately changed, or, perhaps to speak more properly, revived and restored the law respecting trials of this kind.* For the space of thirty or forty years a usage had prevailed in Westminster Hall, by which the judges assumed to themselves the decision of the question, whether libel or not; but the learned Counsel for the prosecution are now obliged to admit, that this is a question for the jury only to decide. You will naturally listen with respect to the opinion of the Court, but you will receive it as matter of advice, not as matter of law: and you will

* Alluding to Mr. Fox's libel bill.

will give it credit, not from any adventitious circumstances of authority, but merely so far as it meets the concurrence of your own understandings.

Give me leave now to state to you the charge, as it stands upon the record :—It is, that Mr. Rowan " being a person of a wicked and turbulent disposition, and maliciously designing and intending to excite and diffuse amongst the subjects of this realm of Ireland, discontents, jealousies and suspicions of our Lord the King and his government, and disaffection and disloyalty to the person and government of our said Lord the King, and to raise very dangerous seditions and tumults within this Kingdom of Ireland, and to draw the government of this Kingdom into great scandal, infamy and disgrace, and to incite the subjects of our said Lord the King to attempt, by force and violence, and with arms, to make alterations in the Government, State, and Constitution of this Kingdom, and to incite his Majesty's said subjects to tumult and anarchy, and to overturn the established Constitution of this Kingdom, and to overawe and intimidate the Legislature of this Kingdom by armed force," did "maliciously and seditiously" publish the paper in question.

Gentlemen, without any observation of mine, you must see that this information contains a direct charge upon Mr. Rowan; namely, that he did, with the intents set forth in the information, publish this paper, so that here you have in fact two or three questions for your decision: first, the matter of fact of the publication; namely did Mr. Rowan publish that paper? If Mr. Rowan did not in fact publish that paper, you have no longer any question on which to employ your minds. If you think that he was in fact the publisher, then and not till then arises the great and important subject to which your judgments must be directed. And that comes shortly and simply to this, is the paper a libel? and did he publish it with the intent charged in the information? But whatever you may think of the abstract question whether the paper be libellous or not, and of which paper it has not even been insinuated that he is the author, these can be no ground for a verdict against him, unless you also are pursuaded that what he did was done with a criminal design. I wish, gentlemen, to simplify and not to perplex; I therefore say again, if these three circumstances conspire that he published it, that it was a libel, and that it was published with the purposes alledged in the information, you ought unquestionably to find him guilty; if on the other hand, you do not find that all these circumstances concurred; if you cannot upon your oaths say that he published it, if it be not in your opinion a libel, and if he did not publish it with the intention alledged; I say upon the failure of any one of these points, my client is entitled, in justice, and upon your oaths, to a verdict of acquital.

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Gentlemen, Mr. Attorney General has thought proper to direct your attention to the state and circumstances of public affairs at the time of this transaction; let me also make a few retrospective observations on a period, at which he has but slightly glanced; I speak of the events which took place before the close of the American war. You know, gentlemen, that France had espoused the cause of America, and we became thereby engaged in war with that nation. *Heu nescia mens hominum futuri!* Little did that ill-fated Monarch know that he was forming the first causes of those disastrous events, that were to end in the subversion of his throne, in the slaughter of his family, and the deluging of his country with the blood of his people. You cannot but remember that at a time, when we had scarcely a regular soldier for our defence; when the old and young were alarmed and terrified with apprehensions of descent upon our coasts; that Providence seemed to have worked a sort of mircle in our favour. You saw a band of armed men come forth at the great call of nature, of honour, and their country. You saw men of the greatest wealth and rank; you saw every class of the community give up its members, and send them armed into the field, to protect the public and private tranquillity of Ireland. It is impossible for any man to turn back to that period, without reviving those sentiments of tenderness and gratitude, which then beat in the public bosom; to recollect amidst what applause, what tears, what prayers, what benedictions, they walked forth amongst spectators, agitated by the mingled sensations of terror and reliance, of danger and protection; imploring the blessings of Heaven upon their heads, and its conquest upon their swords. That illustrious and adored, and *abused* body of men, stood forward and assumed the title, which, I trust, the ingratitude of their country will never blot from its history, "THE VOLUNTEERS OF IRELAND."

Give me leave now, with great respect, to put one question to you: Do you think the assembling of that glorious band of patriots was an insurrection? do you think the invitation to that assembling would have been sedition? — They came under no commission but the call of their country; unauthorized and unsanctioned except by public emergency and public danger. I ask, was that meeting insurrection or not? — I put another question: If any man then had published a call on that body, and stated that war was declared against the State; that the regular troops were withdrawn; that our coasts were hovered round by the ships of the enemy; that the moment was approaching when the unprotected feebleness of age and sex; when the sanctity of habitation would be disregarded and prophaned by the brutal ferocity of a rude invader; if any man had then said to them "leave your industry for a while,

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that you may return to it again, and come forth in arms for the public defence." I put this question boldly to you, gentlemen? It is not the case of the Volunteers of that day; it is the case of my client, at this hour, which I put to you. Would that call have been then pronounced in a Court of Justice, or by a jury on their oaths, a criminal and seditious invitation to insurrection? If it would not have been so then, upon what principle can it be so now? What is the force and perfection of the law? It is the permanency of the law; it is, that whenever the fact is the same, the law is also the same; it is, that the law remains a written, monumented, and recorded letter, to pronounce the same decision, upon the same facts, whenever they shall arise. I will not affect to conceal it; you know there has been an artful, ungrateful, and blasphemous clamour raised against these illustrious characters, the Saviours of the Kingdom of Ireland. Having mentioned this, let me read a few words of the paper alledged to be criminal: "You first took up arms to protect your country from foreign enemies, and from domestic disturbance. For the same purposes, it now becomes necessary that you should resume them"

I should be the last in the world to impute any want of candour to the right honourable gentlemen, who has stated the case on behalf of the prosecution; but he has certainly fallen into a mistake, which, if not explained, might be highly injurious to my client. He supposed that this publication was not addressed to the old Volunteers, but to new combinations of them, formed upon new principles, and actuated by different motives. You have the words to which this construction is imputed upon the record; the meaning of his mind can be collected only from those words which he has made use of to convey it.—The guilt imputable to him can only be inferred from the meaning ascribable to those words. Let his meaning then be fairly collected by resorting to them. Is there a foundation to suppose that this address was directed to any such body men, as has been called a banditti, with what justice it is unnecessary to inquire, and not to the old Volunteers? As to the sneer at the words *Citizen Soldiers*, I should feel that I was treating a very respected friend with an insidious and unmerited unkindness, if I affected to expose it by any gravity of refutation. I may, however, be permitted to observe, that those who are supposed to have disgraced this expression by adopting it, have taken it from the idea of the British Constitution, "that no man in becoming a soldier ceases to be a citizen." Would to God, all enemies as they are, that that unfortunate people had borrowed more from that sacred source of liberty and virtue; and would to God, for the sake of humanity, that they had preserved even the little they did borrow. If even there could

could be an objection to that appellation, it must have been strongest when it was first assumed.* To that period the writer manifestly alludes; he addresses "those who first took up arms:" you first took up arms to protect your country from foreign enemies and from domestic disturbance. For the same purposes it is now necessary that you should resume them. Is this applicable to those who had never taken up arms before?—"A proclamation," says this paper, "has been issued in England for embodying the militia, and a proclamation has been issued by the Lord Lieutenant and Council in Ireland, for repressing all seditious associations. In consequence of both these proclamations, it is reasonable to apprehend danger from abroad, and danger at home." God help us, from the situation of Europe at that time, we were threatened with too probable danger from abroad, and I am afraid it was not without foundation we were told of our having something to dread at home. I find much abuse has been lavished on the disrespect with which the proclamation is treated, in that part of the paper alledged to be a libel. To that my answer for my client is short; I do conceive it competent to a British subject—if he thinks that a proclamation has issued for the purpose of raising false terrors, I hold it to be not only the privilege, but the duty of a citizen to set his countrymen right, with respect to such misrepresented danger; and until a proclamation, in this country, shall have the force of law, the reason and grounds of it are surely at least questionable by the people. Nay, I will go farther; if an actual law had passed receiving the sanction of the three estates, if it be exceptionable in any matter, it is warrantable to any man in the community to state, in a becoming manner, his ideas upon it. And I should be at a loss to know, if the positive laws of Great Britain are thus questionable, upon what ground the proclamation of an Irish government should not be open to the animadversion of an Irish subjects.

Whatever be the motive, or from whatever quarter it arises, says this paper, "alarm has arisen." Gentlemen, do you not know that to be the fact? It has been stated by the Attorney General, and most truly, that the most gloomy apprehensions were entertained by the whole country. "You Volunteers of Ireland, are therefore summoned to arms at the instance of government, as well as by the responsibility attached to your character, and the permanent obligations of your institution."—I am free to confess if any man assuming the liberty of a British subject, to question public topics, should under the mask of that privilege publish a proclamation inviting the profligate and seditious

* The old Volunteers, prior to 1783, used the term *Citizen Soldiers*, exactly agreeable to the good old whiggish principle of the English Constitution, viz. that men in becoming Soldiers, do not cease to be Citizens

tious, those in want and those in despair to rise up in arms to overawe the Legislature, to rob us of whatever portion of the blessings of a free government we possess; I know of no offence involving greater enormity. But that, gentlemen, is the question you are to try. If my client acted with an honest mind and fair intention, and having, as he believed, the authority of Government to support him in the idea that danger was to be apprehended, did apply to that body of so known and so revered a character, calling upon them by their former honour, the principle of their glorious institution, and the great stake they possessed in their country—If he interposed not upon a fictitious pretext, but a real belief of actual and imminent danger, and that their arming at that critical moment was necessary to their country; his intention was not only innocent, but highly meritorious. It is a question, gentlemen, upon which you only can decide; it is for you to say, whether it was criminal in the defendant to be so misled, and whether he is to fall a sacrifice to the prosecution of that government by which he was so deceived. I say again, gentlemen, you can look only to his own words as the interpreter of his meaning, and to the state and circumstances of his country, as he was made to believe them, as the clue to his intention. The case then, gentlemen, is shortly and simply this; a man of the first family and fortune, and character and property among you, reads a proclamation stating the country to be in danger from abroad and at home, and thus alarmed—thus upon authority of the prosecutor, alarmed, applies to that august body, before whose awful presence sedition must vanish, and insurrection disappear.—You must surrender, I hesitate not to say it, your oaths to unfounded assertion, if you can submit to say, that such an act of such a man, so warranted, is a wicked and seditious libel.—If he was a dupe, let me ask you, who was the impostor?—I blush and I shrink with shame and detestation from that meanness of dupery and servile complaisance, which could make that dupe a victim to the accusation of that impostor.

You perceive, gentlemen, that I am going into the merits of this publication, before I apply myself to the question which is first in order of time, namely, whether the publication, in point of fact, is to be ascribed to Mr. Rowan or not. I have been unintentionally led into this violation of order. I should effect no purpose of either brevity or clearness, by returning to the more methodical course of observation. I have been naturally drawn from it by the superior importance of the topic I am upon, namely, the merit of the publication in question.

This publication, if ascribable at all to Mr. Rowan, contains four distinct subjects; the first the invitation to the Volunteers to arm: upon that I have already observed; but those that re-

remain are surely of much importance, and no doubt are prosecuted as equally criminal. The paper next states the necessity of a reform in parliament; it states, thirdly, the necessity of an emancipation of the Catholic Inhabitants of Ireland; and as necessary to the atchievement of all these objects, does fourthly, state the necessity of a general delegated convention of the people.

It has been alledged that Mr. Rowan intended by this publication, to excite the subjects of this country to effect an alteration in the form of your Constitution. And here, gentlemen perhaps, you may not be unwilling to follow a little farther than Mr. Attorney General has done, the idea of a late prosecution in Great Britain upon the subject of a public libel. It is with peculiar fondness I look to that country for solid principles of constitutional liberty and judicial example. You have been pressed in no small degree with the manner in which this publication marks the different orders of our Constitution, and comments upon them. Let me shew you what boldness of animadversion on such topics is thought justifiable in the British nation, and by a British jury. I have in my hand the report of the trial of the printers of the Morning Chronicle, for a supposed libel against the State, and of their acquital: let me read to you some passages from that publication, which a jury of Englishmen were in vain called upon to brand with the name of libel.

'Claiming it as our indefeasible right to associate together, in a peaceable and friendly manner, for the communication of thoughts, the formation of opinions, and to promote the general happiness, we think it unnecessary to offer any apology for inviting you to join us in this manly and benevolent pursuit; the necessity of the inhabitants of every community endeavouring to procure a true knowledge of their rights, their duties, and their interests, will not be denied, except by those who are the slaves of prejudice, or interested in the continuation of abuses. As men who wish to aspire to the title of Freemen, we totally deny the wisdom and the humanity of the advice, to approach the defects of government with "pious awe and trembling solicitude." What better doctrine could the Pope or the tyrants of Europe desire?—We think, therefore, that the cause of truth and justice can never be hurt by temperate and honest discussions; and that cause which will not bear such a scrutiny, must be systematically or practically bad.—We are sensible that those who are not friends to the general good, have attempted to inflame the public mind with the cry of "Danger," whenever men have associated for discussing the principles of government; and we have little doubt but such conduct will be pursued in this place: we would therefore caution

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tion every honest man, who has really the welfare of the nation at heart, to avoid being led away by the prostituted clamours of those who live on the sources of Corruption. We pity the fears of the timorous, and we are totally unconcerned respecting the false alarms of the venal."——

—" We view with concern the frequency of wars.—We are persuaded that the interests of the poor can never be promoted by accession of territory, when bought at the expence of their labour and blood; and we must say, in the language of a celebrated author—" We, who are only the people, but who pay for wars with our substance and our blood, will not cease to tell Kings," or governments, " that to them alone wars are profitable; that the true and just conquests are those which each makes at home, by comforting the peasantry, by promoting agriculture and manufactories: by multiplying men, and the other productions of nature, that then it is that Kings may call themselves the Image of God, whose will is perpetually directed to the creation of new beings. If they continue to make us fight and kill one another, in uniform, we will continue to write and speak, until nations shall be cured of this folly."—We are certain our present heavy burthens are owing, in a great measure to cruel and impolitic wars, and therefore we will do all on our part, as peaceable citizens who have the good of the community at heart, to enlighten each other, and protest against them.

"The present state of the Representation of the People, calls for the particular attention of every man who has humanity sufficient to feel for the honour and happiness of his country; to the defects and corruptions of which we are inclined to attribute unnecessary wars, oppressive taxes, &c. We think it a deplorable case, when the poor must support a *Corruption* which is calculated to oppress them; when the labourer must give his money to afford the means of preventing him having a voice in its disposal; when the lower classes may say,—" We give you our money, for which we have toiled and sweated, and which would save our families from cold and hunger; but we think it more hard, that there is nobody whom we have delegated, to see that it is not improperly and wickedly spent; we have none to watch over *our* interests; the rich only are represented."——

——" An equal and uncorrupt Representation would, we are persuaded, save us from heavy expences, and deliver us from many oppressions, we will therefore do our duty to procure this Reform, which appears to us of the utmost importance."

" In short, we see with the most lively concern, an army of placemen, pensioners, &c. fighting in the cause of Corruption and Prejudice, and spreading the contagion far and wide."——

We

——" We see with equal sensibility the present outcry against reforms, and a proclamation (tending to cramp the liberty of the press, and discredit the true friends of the people) receiving the support of numbers of our countrymen."——

——" We see burdens multiplied—the lower classes sinking into poverty, disgrace, and exces es, and the means of these shocking abuses increased for the purposes of revenue."——

——' We ask ourselves—" Are we in England?"—Have our forefathers fought, bled, and conquered for Liberty?"—And did they not think that the fruits of their patriotism would be more abundant in peace, plenty, and happiness?"———

——" Is the condition of the poor never to be improved?—Great Britain must have arrived at the highest degree of national happiness and prosperity, and our situation must be too good to be mended, or the present outcry against reforms and improvements is inhuman and criminal. But we hope our condition will be speedily improved, and to obtain so desirable a good, is the object of our present association; an union founded on principles of benevolence and humanity; disclaiming all connection with riots and disorder, but firm in our purpose, and warm in our affections for Liberty.

" Lastly—We invite the friends of freedom throughout Great Britain to form similar societies, and to act with unanimity and firmness, till the people be too wise to be imposed upon; and their influence in the government be commensurate with their dignity and importance.

" THEN SHALL WE BE FREE AND HAPPY."

Such, gentlemen, is the language, which a subject of Great Britain thinks himself warranted to hold, and upon such language has the corroborating sanction of a British jury been stamped by a verdict of acquittal. Such was the honest and manly freedom of publication, in a country too where the complaint of abuses has not half the foundation it has here. I said I loved to look to England for the principles of judicial example. I say to you, that it depends on your spirit whether I shall look to it hereafter with sympathy or with shame. Be pleased now, gentlemen, to consider whether the statement of the imperfection in your representation, has been made with a desire of inflaming an attack upon the public tranquillity, or with an honest purpose of procuring a remedy for an actually existing grievance.

It is impossible not to revert to the situation of the times; and let me remind you, that whatever observations of this kind I am compelled thus to make in a court of justice, the uttering of them in this place is not imputable to my client, but to the necessity of defence imposed upon him by this extraordinary prosecution. Gen-

Gentlemen, the representation of your people is the vital principle of their political existence; without it, they are dead, or they live only to servitude; without it, there are two estates acting upon and against the third, instead of acting in co-operation with it; without it, if the people are oppressed by their judges, where is the tribunal to which their judges can be amenable? Without it, if they are trampled upon and plundered by a Minister, where is the tribunal to which the offender shall be amenable? Without it, where is the ear to hear, or the heart to feel, or the hand to redress their sufferings? Shall they be found, let me ask you, in the accursed band of imps and minions that bask in their disgrace, and fatten upon their spoils, and flourish upon their ruin? But let me not put this to you as a merely speculative question. It is a plain question of fact: rely upon it, physical man is every where the same, it is only the various operation of moral causes that gives variety to the social or individual character and condition. How happens it, that modern slavery looks quietly at the despot on the very spot where Leonidas expired? The answer is easy, Sparta has not changed her climate, but she has lost that government which her liberty could not survive.

I call you, therefore, to the plain question of fact; this paper reccommends a reform in parliament; I put that question to your consciences, do you think it needs that reform? I put it boldly and fairly to you, do you think the people of Ireland are represented as they ought to be? Do you hesitate for an answer? If you do, let me remind you, that until the last year three millions of your countrymen have by the express letter of the law been excluded from the reality of actual, and even from the phantom of virtual representation. Shall we then be told that this is only the affirmation of a wicked and seditious incendiary? If you do not feel the mockery of such a charge, look at your country, in what state do you find it? Is it in a state of tranquillity and general satisfaction? These are traces by which good is ever to be distinguished from bad government. Without any very minute enquiry or speculative refinement, do you feel that a veneration for the law, a pious and humble attachment to the constitution, form the political morality of your people? Do you find that comfort and competency among your people, which are always to be found where a government is mild and moderate; where taxes are imposed by a body who have an interest in treating the poorer orders with compassion, and preventing the weight of taxation from pressing sore upon them?

Gentlemen, I mean not to impeach the state of your representation; I am not saying that it is defective, or that it ought to be altered or amended, nor is this a place for me to say, whether

ther I think that three millions of the inhabitants of a country whose whole number is but four, ought to be admitted to any efficient situation in the State; it may be said and truly, these are not questions for either of us directly to decide; but you cannot refuse them some passing consideration at least, when you remember that on this subject the real question for your decision is, whether the allegation of a defect in your constitution is so utterly unfounded and false, that you can ascribe it only to the malice and perverseness of a wicked mind, and not to the innocent mistake of an ordinary understanding;—whether it cannot be mistake; whether it can be only sedition.

And here, gentlemen, I own I cannot but regret, that one of our countrymen should be criminally pursued for asserting the necessity of a reform, at the moment when that necessity seems admitted by the parliament itself; that this unhappy reform shall at the same moment be a subject of legislative discussion, and criminal prosecution; far am I from imputing any sinister design to the virtue or wisdom of our government, but who can avoid feeling the deplorable impression that must be made on the public mind, when the demand for that reform is answered by a criminal information?

I am the more forcibly impressed by this concern, when I consider that when this information was first put upon the file, the subject was transiently mentioned in the House of Commons. Some circumstances retarded the progress of the inquiry there; and the progress of the information was equally retarded here. The first day of this session you all know, that subject was again brought forward in the House of Commons, and as if they had slept together, this prosecution was also revived in the Court of King's Bench; and that before a jury, taken from a pannel partly composed of those very members of parliament, who, in the House of Commons, must debate upon this subject as a measure of public advantage, which they might have here to consider as a public crime.

This paper, gentlemen, insists upon the necessity of emancipating theCatholics of Ireland, and that is charged as a part of the libel. If they had waited another year, if they had kept this prosecution impending for another year, how much would remain for a jury to decide upon, I should be at a loss to discover. It seems as if the progress of public reformation was eating away the ground of the prosecution. Since the commencement of the prosecution, this part of the libel has unluckily received the sanction of the legislature. In that interval our Catholic brethren have obtained that admission, which it seems it was a libel to propose: in what way to account for this, I am really at a loss. Have any alarms been occassioned by the emancipation of our Catholic brethren? Has the bigotted ma-

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lignity of any individuals been crushed? Or has the stability of the government, or has that of the country been weakened? Or is one million of subjects stronger than four millions? Do you think that the benefit they received should be poisoned by the stings of vengeance? If you think so, you must say to them "you have demanded your emancipation and you have got it; but we abhor your persons, we are outraged at your success; and we will stigmatise by a criminal prosecution the relief which you have obtained from the voice of your country." I ask you, gentlemen, do you think as honest men, anxious for the public tranquillity, conscious that there are wounds not yet completely cicatrized, that you ought to speak this language at this time, to men who are too much disposed to think, that in this very emancipation they have been saved from their own parliament by the humanity of their sovereign? Or do you wish to prepare them for the revocation of these improvident concessions? Do you think it wise or humane at this moment to insult them, by sticking up in a pillory the man who dared to stand forth their advocate? I put it to your oaths, do you think, that a blessing of that kind, that a victory obtained by justice over bigotry and oppression, should have a stigma cast upon it by an ignominious sentence upon men bold and honest enough to propose that measure? to propose the redeeming of Religion from the abuses of the Church, the reclaiming of three millions of men from bondage, and giving liberty to all who had a right to demand it; giving, I say, in the so much censured words of this paper, giving "UNIVERSAL EMANCIPATION!"—I speak in the spirit of the British law, which makes liberty commensurate with and inseparable from the British soil; which proclaims even to the stranger and the sojourner, the moment he sets his foot upon British earth, that the ground on which he treads is holy, and consecrated by the Genius of UNIVERSAL EMANCIPATION. No matter in what language his doom may have been pronounced;—no matter what complexion incompatible with freedom, an Indian or an African sun may have burnt upon him;—no matter in what disastrous battle his liberty may have been cloven down;—no matter with what solemnities he may have been devoted upon the altar of slavery; the first moment he touches the sacred soil of Britain, the altar and the god sink together in the dust; his soul walks abroad in her own majesty; his body swells beyond the measure of his chains, that burst from around him, and he stands redeemed, regenerated, and disenthralled, by the irresistable Genius of UNIVERSAL EMANCIPATION!——

[Here Mr. Curran was interrupted by a sudden burst of applause from the court and hall; silence however was restored af-

after some minutes, by the interposition of Lord Clonmel, who declared the great pleasure he himself felt, at the exertion of professional talents, but disapproved any intemperate expression of applause in a court of justice.]

Mr. Curran then proceeded — Gentlemen, I am not such a fool, as to ascribe any effusion of this sort, to any merit of mine. It is the mighty theme, and not the inconsiderable advocate, that can excite interest in the hearer — What you hear is but the testimony which Nature bears to her own character; it is the effusion of her gratitude to that power, which stampt that character upon her.

And, gentlemen, permit me to say, that if my client had occasion to defend his cause by any mad or drunken appeals to extravagance or licentiousness, I trust in God, I stand in that situation, that, humble as I am, he would not have resorted to me to be his advocate. I was not recommended to his choice by any connection of principle or party, or even private friendship; and saying this I cannot but add, that I consider not to be acquainted with such a man as Mr. Rowan, a want of personal good fortune.

Gentlemen, upon this great subject of Reform and Emancipation, there is a latitude and boldness of remark, justifiable in the people and necessary to the defence of Mr. Rowan, for which the habits of professional studies, and technical adherence to established forms, have rendered me unfit. It is however my duty, standing here as his advocate, to make some few observations to you, which I conceive to be material.

Gentlemen, you are sitting in a country, which has a right to the British Constitution, and which is bound by an indissoluble union with the British nation. If you were now even at liberty to debate upon that subject; if you even were not by the most solemn compacts, founded upon the authority of your ancestors and of yourselves, bound to that alliance, and had an election now to make; in the present unhappy state of Europe, if you had heretofore been a stranger to Great Britain, you would now say, we will enter into society and union with you:

Una salus ambobus erit, commune periclum.

But to accomplish that union let me tell you, you must learn to become like the English people; it is vain to say, you will protect their freedom if you abandon your own. The pillar whose base has no foundation, can give no support to the dome under which its head is placed; and if you profess to give England that assistance which you refuse to yourselves, she will laugh at your folly, and despise your meanness and insincerity.

Let us follow this a little further; I know you will interpret what I say with the candour in which it is spoken. England is

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marked by a natural avarice of freedom, which she is studious to engross and accumulate, but most unwilling to impart, whether from any necessity of her policy, or from her weakness, or from her pride, I will not presume to say, but that so is the fact; you need not look to the East, or to the West—you need only look to yourselves.*

In order to confirm that observation, I would appeal to what fell from the learned Counsel from the Crown, that notwithstanding the alliance subsisting for two centuries past, between the two countries, the date of liberty in one goes no further back than the year 1784.

If it required additional confirmation, I should state the case of the invaded American, and the subjugated Indian, to prove that the policy of England has ever been to govern her connexions more as colonies than as allies; and it must be owing to the great spirit indeed of Ireland if she shall continue free. Rely upon it, she will ever have to hold her course against an adverse current; rely upon it, if the popular spring does not continue strong and elastic, a short interval of debilitated nerve and broken force will send you down the stream again, and reconsign you to the condition of a province.†

If such should become the fate of your Constitution, ask yourselves what must be the motive of your government? It is easier to govern a province by a faction, than to govern a co-ordinate country by co-ordinate means. I do not say it is now, but it will be always thought easiest by *the managers of the day*, to govern the Irish nation by the agency of such a faction, as long as this country shall be found willing to let her connexion with Great Britain be preserved only by her own degradation. In such a precarious and wretched state of things, if it shall ever be found to exist, the true friend of Irish liberty, and British connexion, will see, that the only means of saving both must be, as Lord Chatham expressed it, "the infusion of new health and blood into the Constitution." He will see how deep a

* This is true in part—The people of England were desirous of enjoying liberty themselves, but they with-held it from their colonies and dependencies with a jealous and a niggardly hand. Their possessions in the East and the West, acquired by conquest, are governed by despotic law.—But do the English themselves, at present, enjoy political freedom, that portion of liberty, for which they so nobly contended in 1688?—No—The good old Whiggish principles of the Revolution are beaten down—every popular right is swallowed up by Lordly influence, and every liberal principle is sunk in commercial enterprize—Trade, trade! Money, money! come from what quarter it may, or acquired by whatever means!

† The Orator here was prophetical—In a very few years, an adverse current overwhelmed all her energies, and Corruption swallowed up all her powers—Ireland lost her parliament, and all the remains of national independence, which, for a short period, she had possessed.

a stake each country has in the liberty of the other; he will see what a bulwark he adds to the common cause, by giving England a co-ordinate, and co-interested ally, instead of an oppressed, enfeebled and suspected dependant; he will see how grossly the credulity of Britain is abused by those, who make her believe, that her solid interest is promoted by our depression; he will see the desperate precipice to which she approaches by such a conduct, and, with an animated and generous piety, he will labour to avert her danger. But, gentlemen of the jury, what is likely to be his fate? The interest of the Sovereign must be forever the interest of his People, because his interest lives beyond his life; it must live in his fame, it must live in the tenderness of his solicitude for an unborn posterity; it must live in that heart-attaching bond, by which millions of men have united the destinies of themselves and their children with his, and call him by the endearing appellation of King and father of his people.

But what can be the interest of such a government as I have described? Not the interest of the King, not the interest of the People, but the sordid interest of the hour; the interest in deceiving the one, and in oppressing and deforming the other: the interest of unpunished rapine and unmerited favour: that odious and abject interest, that prompts them to extinguish public spirit in punishment or in bribe; and to pursue every man even to death, who has sense to see, and integrity and firmness enough to abhor and to oppose them. What therefore, I say, gentlemen, will be the fate of the man, who embarks in an enterprize of so much difficulty and danger? I will not answer it. Upon that hazard, has my client put every thing that can be dear to man;—his fame, his fortune, his person, his liberty and his children; but with what event your verdict only can answer, and to that I refer your country.

Gentlemen, there is a fourth point remaining. — Says this paper, "for both these purposes, it appears necessary that provincial conventions should assemble preparatory to the convention of the Protestant people. The delegates of the Catholic body are not justified in communicating with individuals, or even bodies of an inferior authority, and therefore an assembly of a similar nature and organization, is necessary to establish an intercourse of sentiment, an uniformity of conduct, an united cause, and an united nation. If a convention on the one part does not soon follow, and is not connected with that on the other, the common cause will split into partial interests; the people will relax into inattention and inertness; the union of affection and exertion will dissolve, and too probably some local insurrrection, instigated by the malignity of our common enemy, may commit the character and risque the tranquility

of the island, which can be obviated only by the influence of an assembly arising from and assimilated with the people, and whose spirit may be as it were, knit with the soul of the nation, unless the sense of the Protestant people, be, on their part as fairly collected and as judiciously directed, unless individual exertion consolidates into collective strength, unless the particles unite into one mass, we may perhaps serve some person or some party for a little, but the public not at all. The nation is neither insolent, nor rebellious, nor seditious ; whilst it knows its rights, it is unwilling to manifest its powers; it would rather supplicate administration to anticipate revolution by well timed reform, and to save their country in mercy to themselves."

Gentlemen, it is with something more than common reverence, it is with a species of terror, that I am obliged to tread this ground.—But what is the idea put in the strongest point of view.—We are willing not to manifest our powers, but to supplicate administration, to anticipate revolution, that the legislature may save the country in mercy to itself.

Let me suggest to you, gentlemen, that there are some circumstances which have happened in the history of this country, that may better serve as a comment upon this part of the case than any I can make. I am not bound to defend Mr. Rowan as to the truth or wisdom of the opinions he may have formed. But if he did really conceive the situation of the country such, as that the not redressing her grievances might lead to a convulsion, and of such an opinion not even Mr. Rowan is answerable here for the wisdom, much less shall I insinuate any idea of my own upon so awful a subject; but if he did so conceive the fact to be, and acted from thefair and honest suggestion of a mind anxious for the public good, I must confess, gentlemen, I do not know in what part of the British Constitution to find the principle of his criminality,

But, gentlemen, be pleased further to consider, that he cannot be understood to put the fact on which he argues on the authority of his assertion. The condition of Ireland was as open to the observation of every other man as to that of Mr.Rowan; what does this part of the publication amount to? In my mind, simply to this: " the nature of oppression in all countries is such, that although it may be borne to a certain degree, it cannot be borne beyond that degree; you find it exemplified in Great Britain; you find the people of England patient to a certain point, but patient no longer. That infatuated monarch James II. experienced this ; the time did come, when the measure of popular suffering, and popular patience was full ; when a single drop was sufficient to make the waters of bitterness to overflow. I think this measure in Ireland is brimful at present

sent; I think the state of representation of the people in parliament is a grievance: I think the utter exclusion of three millions of people, is a grievance of that kind that the people are not likely long to endure, and the continuation of which may plunge the country into that state of despair which wrongs exasperated by perseverance never fail to produce." But to whom is even this language addressed? Not to the body of the people, on whose temper and moderation if once excited, perhaps not much confidence could be placed; but to that authoritive body whose influence and power would have restrained the excesses of the irritable and tumultuous; and for that purpose expressly does this publication address the Volunteers. "We are told that we are in danger:—I call upon you, the great constitutional saviours of Ireland, to defend the country to which you have given political existence, and use whatever sanction your great name, your sacred character, and the weight you have in the community, must give you, to repress wicked designs, if any there are."——

"We feel ourselves strong, the people are always strong—the public chains can only be rivetted by the public hands; look to those devoted regions of Southern despotism, behold the expiring victim on his knees, presenting the javelin reeking with his blood to the ferocious monster who returns it into his heart. Call not that monster the tyrant, he is no more than the executioner of that inhuman tyranny which the people practice upon themselves, and of which he is only reserved to be a later victim than the wretch he has sent before. Look to a nearer country, where the sanguinary characters are more legible; whence you almost hear the groans of death and torture. Do you ascribe the rapine and murder of France to the few names that we are execrating here? or do you not see that it is the phrenzy of an infuriated multitude abusing its own strength, and practising those hideous abominations upon itself. Against the violence of this strength let your virtue and influence be our safeguard."

What criminality, gentlemen of the jury, can you find in this? what at any time?—But I ask you, peculiarly at this momentous period, what guilt can you find in it? My client saw the scene of horror and blood which covers almost the face of Europe: he feared that causes, which he thought similar, might produce similar effects, and he seeks to avert those dangers by calling the united virtue and tried moderation of the country into a state of strength and vigilance. Yet this is the conduct which the prosecution of this day seeks to stigmatize. And this is the language for which this paper is reprobated to day, as tending to turn the hearts of the people against their Sovereign, and inviting them to overturn the Constitution.

Let

Let us now, gentlemen, consider the concluding part of this publication.—It recommends a meeting of the people to deliberate on constitutional methods of redressing grievances.—Upon this subject I am inclined to suspect that I have in my youth taken up crude ideas, not founded, perhaps, in law; but I did imagine that when the Bill of Rights restored the right of petitioning for the redress of grievances, it was understood that the people might boldly state among themselves, that grievances did exist; that they might lawfully assemble themselves in such a manner as they might deem most orderly and decorous. I thought I had collected it from the greatest luminaries of the law. The power of petitioning seemed to me to imply the right of assembling for the purpose of deliberation. The law requiring a petition to be presented by a limited number, seemed to me to admit that the petition might be prepared by any number whatever, provided, in doing so, they did not commit any breach or violation of the public peace. I know that there has been a law passed in the Irish parliament of last year, which may bring my former opinion into a merited want of authority. That law declares, "that no body of men may delegate a power to any similar number, to act, think, or petition for them!"—If that law had not passed, I should have thought that the assembling by a delegated convention was recommended, in order to avoid the tumult and disorder of a promiscuous assembly of the whole mass of the people.—I should have conceived before that act, that any law to abridge the orderly appointment of the few to consult for the interest of the many, and thus force the many to consult by themselves or not at all, would in fact be a law not to restrain but to promote insurrection; but that law has spoken, and my error must stand corrected. Of this, however, let me remind you, you are to try this part of the publication by what the law was then, not by what it is now. How was it understood until last session of Parliament? — You had both in England and Ireland, for the last ten years, these delegated meetings. The Volunteers of Ireland, in 1782, met by delegation; they framed a plan of Parliamentary Reform; they presented it to the representative wisdom of the nation; it was not received, but no man ever dreamed that it was not the undoubted right of the subject to assemble in that manner. They assembled by delegation at Dungannon, and to shew the idea then entertained of the legality of their public conduct, that same body of Volunteers was thanked by both Houses of Parliament, and their delegates most graciously received at the throne. The other day, you had delegated Representatives for the Catholics of Ireland, publicly elected by the members of that persuasion, and sitting in convention in the heart of your capital, carrying on an actual treaty with the existing government, and under the eye of

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your own Parliament, which was then assembled; you have seen the delegates from that convention, carry the complaints of their grievances to the foot of the Throne; from whence they brought back to that convention, the auspicious tidings of that redress which they had been refused at home.

Such, gentlemen, have been the means of popular communication and discussion, which until the last session have been deemed legal in this country; as happily for the sister kingdom, they are yet considered there.

I do not complain of this act as any infraction of popular liberty; I should not think it becoming in me to express any complaint against a law, when once become such. I observe only, that one mode of popular deliberation is hereby taken utterly away, and you are reduced to a situation in which you never stood before. You are living in a country, where the Constitution is rightly stated to be only ten years old; where the people have not the ordinary rudiments of education. It is a melancholy story, that the lower orders of the people here have less means of being enlightened than the same class of people in any other country. If there be no means left by which public measures can be canvassed, what will be the consequence? Where the press is free, and discussion unrestrained, the mind by the collision of intercourse, gets rid of its own asperities, a sort of insensible perspiration takes place, by which those acrimonies, which would otherwise fester and inflame, are quietly dissolved and dissipated. But now, if any aggregate assembly shall meet, they are censured; if a printer publishes their resolutions, he is punished; rightly to be sure in both cases, for it has been lately done!—If the people say, let us not create tumult, but meet in delegation, they cannot do it; if they are anxious to promote Parliamentary Reform, in that way, they cannot do it; the law of the last session has for the first time declared such meetings to be a crime!—What then remains?—Only the Liberty of the Press, that sacred palladium, which no influence, no power, no minister, no government, which nothing but the depravity, or folly of a jury, can ever destroy.

And what calamity are the people saved from, by having public communication left open to them? I will tell you, gentleman, what they are saved from, and what the government is saved from; I will tell you also, to what both are exposed by shutting up that communication in one—case sedition speaks aloud, and walks abroad; the Demagogue goes forth, the public eye is upon him, he frets his busy hour upon the stage, but soon either weariness, or bribe, or punishment, or disappointment, bear him down, or drive him off, and he appears no more; in the other case, how does the work of sedition go forward?—Night after night, the muffled rebel steals forth in the dark, and

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casts another and another brand upon the pile, to which, when the hour of fatal maturity shall arrive, he will apply the flame. If you doubt of the horrid consequences of suppressing the effusion of individual discontent, look to those enslaved countries where the protection of Despotism is supposed to be secured by such restraints, even the person of the Despot there is never in safety. Neither the fears of the despot, nor the machinations of the slave have any slumber, the one anticipating the moment of peril, the other watching the opportunity of aggression. The fatal crisis is equally a surprize upon both; the decisive instant is precipitated without warning, by folly on the one side, or by frenzy on the other, and there is no notice of the treason till the traitor acts. In those unfortunate countries (one cannot read it without horror) there are officers whose province it is, to have the water, which is to be drank by their rulers, sealed up in bottles, lest some wretched miscreant should throw poison into the draught!

But, gentlemen, if you wish for a nearer and more interesting example, you have it in the history of your own Revolution; you have it at that memorable period, when the Monarch found a servile acquiescence in the ministers of his folly, when the liberty of the press was trodden under foot, when venal Sheriffs returned packed juries to carry into effect those fatal conspiracies of the few against the many; when the devoted benches of public justice were filled by some of those Foundlings of Fortune, who, overwhelmed in the torrent of corruption at an early period, lay at the bottom like drowned bodies, while soundness or sanity remained in them; but at length becoming buoyant by putrefaction, they rose as they rotted, and floated to the surface of the polluted stream, where they were drifted along, the objects of terror, and contagion, and abomination!

In that awful moment of a nation's travail, of the last gasp of Tyranny, and the first breath of Freedom, how pregnant is the example? The Press extinguished, the People enslaved, and the Prince undone!

As the advocate of society, therefore, of peace, of domestic liberty, and the lasting union of the two countries, I conjure you to guard the liberty of the press, that great centinel of the State, that grand detector of public imposture: guard it, because when it sinks, there sinks with it in one common grave, the liberty of the Subject and the security of the Crown.

Gentlemen, I am glad that this question has not been brought forward earlier; I rejoice for the sake of the court, of the jury, and of the public repose, that this question has not been brought forward till now. In Great Britain, analogous circumstances have taken place. At the commencement of that unfortunate

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war which has deluged Europe with blood, the spirit of the English people was tremblingly alive to the terror of French principles; at that moment of general paroxysm, to accuse was to convict. The danger loomed larger to the public eye, from the misty medium through which it was surveyed. We measure inaccesible heights by the shadows which they project, where the lowness and the distance of the light form the length of the shade.

There is a sort of aspiring and adventurous credulity, which disdains assenting to obvious truths, and delights in catching at the improbability of circumstances, as its best ground of faith. To what other cause, gentlemen, can you ascribe that in the wise, the reflecting, and the philosophic nation of GreatBritain, a printer has been found guilty of a libel, for publishing those resolutions, to which the present Minister of that kingdom had actually subscribed his name? To what other cause can you ascribe, what in my mind is still more astonishing, in such a country as Scotland, a nation cast in the happy medium between the spiritless acquiescence of submissive poverty, and the sturdy credulity of pampered wealth; cool and ardent, adventurous and persevering; winging her eagle flight against the blaze of every science, with an eye that never winks, and a wing that never tires; crowned as she is with the spoils of every Art, and decked with the wreath of every Muse; from the deep and scrutinizing researches of her Humes, to the sweet and simple, but not less sublime and pathetic morality of her Burns *—how from the bosom of a country like that, genius and character, and talents, should be banished to a distant barbarous soil; condemned to pine under the horrid communion of vulgar vice and base-born profligacy for twice the period that ordinary calculation gives to the continuance of human life? But I will not further press any idea that is painful to me, and I am sure must be painful to you: I will only say, you have now an example of which neither England nor Scotland had the advantage; you have the example of the panic, the infatuation, and the contrition of both. It is now for you to decide whether you will profit by their experience of idle panic and idle regret, or whether you meanly prefer to palliate a servile imitation of their frailty, by a paltry affectation of their repentance. It is now for you to shew that you are not carried away by the same hectic delusions, to acts, of which no tears can wash away the consequences, or the indelible reproach.

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* What a beautiful compliment is here paid to the genius and industry of Scotland! — The Orator afterwards alludes to the cruel and despotic banishment of Muir, Palmer, and their associates, by the Scottish judges, to the barbarous shores of New Holland, where they all perished.

Gentlemen, I have been warning you by instances of public intellect suspended or obscured; let me rather excite you by the example of that intellect recovered and restored. In that case which Mr. Attorney General has cited himself, I mean that of the trial of Lambert in England, is there a topic of invective against constituted authorities; is there a topic of abuse against every department of British government, that you do not find in the most glowing and unqualified terms in that publication, for which the printer of it was prosecuted, and acquitted by an English jury? See too what a difference there is between the case of a man publishing his own opinion of facts, thinking that he is bound by duty to hazard the promulgation of them, and without the remotest hope of any personal advantage, and that of a man who makes publication his trade.—And saying this, let me not be misunderstood; it is not my province to enter into any abstract defence of the opinions of any man upon public subjects. I do not affirmatively state to you that these grievances, which this paper supposes, do in fact exist; yet I cannot but say, that the movers of this prosecution have forced that question upon you. Their motives and their merits, like those of all accusers, are put in issue before you; and I need not tell you how strongly the motive and merits of any *informer* ought to influence the fate of his accusation.

I agree most implicitly with Mr. Attorney General, that nothing can be more criminal than an attempt to work a change in the government by armed force; and I intreat that the Court will not suffer any expression of mine to be considered as giving encouragement or defence to any design to excite disaffection, to everawe or to overturn the government: but I put my client's case upon another ground——if he was led into an opinion of grievances where there were none, if he thought there ought to be a reform where none was necessary, he is answerable only for his intention. He can be answerable to you in the same way only that he is answerable to that God, before whom the accuser, the accused, and the judge must appear together, that is, not for the clearness of his understanding, but for the purity of his heart.

Gentlemen, Mr. Attorney General has said, that Mr. Rowan did by this publication (supposing it to his) recommend, under the name of equality, a general indiscrimniate assumption of public rule by every the meanest person in the State.—Low as we are in point of public information, there is not, I believe, any man, who thinks for a moment, that does not know, that all which the great body of the people, of any country, can have from any government, is a fair encouragement to their industry, and protection for the fruits of their labour. And there is scarcely any man, I believe, who does not know, that

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if a people could become so silly as to abandon their stations in society, under pretence of governing themselves, they would become the dupes and the victims of their own folly. But does this publication recommend any such infatuated abandonment, or any such desperate assumption?—I will read the words which relate to that subject! "By liberty we never understood unlimited freedom, nor by equality, the levelling of property or destruction of subordination." I ask you with what justice, upon what principle of common sense, you can charge a man with the publication of sentiments, the very reverse of what his words avow? and that, when there is no collateral evidence, where there is no foundation whatever, save those very words, by which his meaning can be ascertained? or if you do adopt an arbitrary principle of imputing to him *your* meaning instead of his own, what publication can be guiltless or safe? It is a sort of accusation that I am ashamed and sorry to see introduced in a Court acting on the principles of the British Constitution.

In the bitterness of reproach it was said, "out of thine own mouth will I condemn thee;" from the severity of justice I demand no more. See if in the words that have been spoken, you can find matter to acquit, or to condemn. "By Liberty we never understood unlimited freedom, nor by Equality the levelling of property, or the destruction of subordination.—This is a calumny invented by that faction, or that gang, which misrepresents the King to the people, and the people to the King, traduces one half of the nation to cajole the other, and, by keeping up distrust and division, wishes to continue the proud arbitrators of the fortune and fate of Ireland."—Here you find that meaning disclaimed as a calumny, which is artfully imputed as a crime.

I say, therefore, gentlemen of the jury, as to the four parts into which the publication must be divided, I answer thus: it calls upon the Volunteers. Consider the time, the danger, the authority of the prosecutors themselves for believing that danger to exist; the high character, the known moderation, the approved loyalty of that venerable institution, the similarity of the circumstances between the period at which they are summoned to take arms, and that in which they have been called upon to reassume them. Upon this simple ground, gentlemen, you will decide, whether this part of the publication was libellous and criminal or not.

As to Reform, I could wish to have said nothing upon it; I believe I have said enough—if he thought the state required it, he acted like an honest man; for the rectitude of the opinion he was not answerable; he discharged his duty in telling the country that he thought so.

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As to the emancipation of the Catholics, I cannot but say that Mr. Attorney General did very wisely in keeping clear of that. Yet, gentlemen, I need not tell you how important a figure it was intended to make upon the scene, though from unlucky accidents, it has become necessary to expunge it during the rehearsal.

Of the concluding part of this publication, the Convention which it recommends, I have spoken already. I wish not to trouble you with saying more upon it. I feel that I have already trespassed much upon your patience. In truth, upon a subject embracing such a variety of topics, a rigid observance either of conciseness or arrangement could perhaps scarcely be expected. It is however with pleasure I feel I am drawing to a close, and that only one question remains, to which I beg your attention.

Whatever, gentlemen, may be your opinion of the meaning of this publication, there yet remains a great point for you to decide upon; namely, whether, in point of fact, this publication be imputable to Mr. Rowan or not?—Whether he did publish it or not?—And two witnesses are called to that fact, one of the name of *Lyster*, and the other of the name of *Morton*.—You must have observed, that Morton gave no evidence upon which that paper could even have been read; he produced no paper, he identified no paper; so that in point of law, there was no evidence to be given to a jury; and, therefore it turns entirely upon the evidence of the other witness. He has stated that he went to a public meeting, in a place where there was a gallery crowded with spectators; and that he there got a printed paper, the same which has been read to you.

I know you are well acquainted with the fact, that the credit of every witness must be considered by, and rest with the jury.—They are the sovereign judges of that circumstance, and I will not insult your feelings, by insisting on the caution with which you should watch the testimony of a witness that seeks to affect the liberty, or property, or character of your fellow citizens. Under what circumstances does this evidence come before you? The witness says, he has got a commission in the army by the interest of a lady, from a person then high in administration. He told you that he made a memorandum upon the back of that paper, it being his general custom, when he got such papers to make an indorsement upon them; that he did this from mere fancy; that he had no intention of giving any evidence on the subject; he took it with no such view.

There is something whimsical enough in this curious story. Put his credit upon the positive evidence adduced to his character. Who he is I know not, I know not the man; but his credit is impeached. Mr. Blake was called, he said he knew him. I ask-

asked him, "do you think, Sir, that Mr. Lyster is or is not a man deserving credit upon his oath?"—If you find a verdict of conviction it can be only upon the credit of Mr. Lyster. What said Mr. Blake? Did he tell you that he believed he was a man to be believed upon his oath? he did not attempt to say that he was. The best he could say was, that he would hesitate. Do you believe Blake? Have you the same opinion of Lyster's testimony that Mr. Blake has? Do you know Lyster? If you do know him, and know that he is credible, your knowledge should not be shaken by the doubts of any man. But if you do not know him, you must take his credit from an unimpeached witness, swearing "that he would hesitate to believe him."

In my mind, there is a circumstance of the strongest nature that came out from Lyster on the table. I am aware, that a very respectable man, if impeached by surprise, may not be ready prepared to repel a wanton calumny by contrary testimony. But was Lyster unapprized of this attack upon him? What said he? "I knew that you had Blake to examine against me, you have brought him here for that purpose." He knew the very witness that was to be produced against him; he knew that his credit was impeached, and yet he produced no person to support that credit. What said Mr. Smyth? "From my knowledge of him I would not believe him upon his oath."

Mr. Attorney General.——I beg pardon, but I must set Mr. Curran right. Mr. Lyster said, he heard Blake would be here but not in time to prepare himself.

Mr. Curran.——But what said Mrs. Hatchell? Was the production of that witness a surprize upon Mr. Lyster? her cross examination shews the fact to be the contrary. The learned counsel, you see, was perfectly apprized of a chain of private circumstances, to which he pointed his questions. Did he know these circumstances by inspiration? No; they could come only from Lyster himself. I insist, therefore, the gentleman knew his character was to be impeached, his counsel knew it; and not a single witness has been produced to support it; then consider, gentlemen, upon what ground you can find a verdict of conviction against my client, when the only witness produced to the fact of publication is impeached, without even an attempt to defend his character. Many hundreds, he said, were at that meeting, why not produce one of them to swear to the fact of such a meeting? One he has ventured to name, but he was certainly very safe in naming a person, who he has told you is not in the kingdom, and could not therefore be called to confront him.

Gentlemen, let me suggest another observation or two.—If still you have any doubt as to the guilt or innocence of the de-

defendant, give me leave to suggest to you what circumstances you ought to consider, in order to found your verdict: You should consider the character of the person accused, and in this your task is easy. I will venture to say, there is not a man in this nation, more known than the gentleman who is the subject of this prosecution, not only by the part he has taken in public concerns, and which he has taken in common with many, but still more so, by that extraordinary sympathy for human affliction, which, I am sorry to think, he shares with so small a number. There is not a day that you hear the cries of your starving manufacturers in your streets, that you do not also see the advocate of their sufferings—that you do not see his honest and manly figure, with uncovered head soliciting for their relief, searching the frozen heart of charity, for every string that can be touched by compassion, and urging the force of every argument and every motive, save that which his modesty suppresses—the authority of his own generous example. Or if you see him not there, you may trace his steps to the private abode of disease and famine and despair, the messenger of Heaven, bearing with him food and medicine and consolation.—Are these the materials, of which anarchy and public rapine are to be formed?—Is this the man, on whom to fasten the abominable charge of goading on a frantic populace to mutiny and bloodshed?—Is this the man likely to apostatizefrom every principle that can bind him to the State, his birth, his property, his education, his character, and his children? Let me tell you, gentlemen of the jury, if you agree with his prosecutors, in thinking that there ought to be a scrifice of such a man, on such an occasion, and upon the credit of such evidence, you are to convict him—never did you, never can you give a sentence, consigning any man to public punishment with less danger to his person or to his fame: For where could the hireling be found to fling contumely or ingratitude at his head, whose private distresses he had not laboured to alleviate, or whose public condition he had not laboured to improve.

I cannot, however, avoid adverting to a circumstance that distinguishes the case of Mr. Rowan, from that of a late sacrifice in a neighbouring kingdom *

The severer law of that country, it seems, and happy for them that it should, enables them to remove from their sight the victim of their infatuation;—the more merciful spirit of our law deprives you of that consolation; his sufferings must remain for ever before your eyes, a continual call upon your shame and your remorse. But those sufferings will do more; they will not rest satisfied with your unavailing contrition, they will chal-

* Here Mr. Curran again alludes to the harsh conduct of the Scottish Judges, in the banishment and tragical fate of the Scotch Reformers.

challenge the great and paramount inquest of society, the man will be weighed against the charge, the witness and the sentence; and impartial justice will demand, why has an *Irish* jury done this deed? the moment he ceases to be regarded as a criminal, he becomes of necessity an accuser — and, let me ask you, what can your most zealous defenders be prepared to answer to such a charge? When your sentence shall have sent him forth to that stage which guilt alone can render infamous, let me tell you, he will not be like a little statue upon a mighty pedestal, diminishing by elevation; but he will stand a striking and imposing object upon a monument, which, if it does not, and it cannot, record the atrocity of his crime, must record the atrocity of his conviction. And upon this subject, credit me when I say, that I am still more anxious for you, than I can possibly be for him. I cannot but feel the peculiarity of your situation. Not the jury of his own choice, which the law of England allows, but which ours refuses; collected in that box by a person, certainly no friend to Mr. Rowan, certainly not very deeply interested in giving him a very impartial jury. Feeling this, as I am persuaded you do, you cannot be surprized, however you may be distressed at the mournful presage, with which an anxious public is led to fear the worst from your possible determination. But I will not, for the justice and honour of our common country, suffer my mind to be borne away by such melancholy anticipation; I will not relinquish the confidence, that this day will be the period of his sufferings; and however mercilessly he has been hitherto pursued, that your verdict will send him home to the arms of his family and the wishes of his country. But if, which Heaven forbid, it hath still been unfortunately determined, that because he has not bent to Power and Authority, because he would not bow down before the Golden Calf and worship it, he is to be bound and cast into the furnace; I do trust in God, that there is a redeeming spirit in the Constitution, which will be seen to walk with the sufferer through the flames, and to preserve him unhurt by the conflagration.——

[After Mr. *Curran* had concluded, there was another universal burst of applause through the court and hall, for some minutes, which was again silenced by the interference of Lord *Clonmell.*]

Mr. Attorney General rose, and with warmth averred, that the insinuation of Mr. Curran, that he had been instructed to commence this prosecution by Government, was absolutely false; and that without the least intention to oppress or injure Mr. Rowan, his trial had been unavoidably delayed until the present time, owing to an error in the record, the absence of witnesses, and the great press of public business.

Mr. Prime Serjeant then addreſſed the jury — He recapitulated and collated the evidence, and endeavoured to ſhew, from the whole of the teſtimony given in, that there could be no doubt but the libel was publiſhed by the traverſer. He then read and remarked upon the evil and deſtructive tendency of the libel—"Without univerſal ſlavery (ſaid he) there cannot be univerſal emancipation; and, without the ruin of that Conſtitution, the panegyric upon which produced ſuch a burſt of applauſe in favour of the learned Counſel, there cannot be a repreſentative Legiſlature!"

Lord Clonmell, Chief Juſtice, then delivered a charge to the Jury.—His Lordſhip commented much on the libel, as ſet forth in the information, introducing very ſevere ſtrictures, and ſhewing its wicked tendency. He then ſummed up the teſtimony; but what his Lordſhip's directions to the jury were concerning the evidence of Lyſter (who, his Lordſhip admitted, to be the only witneſs that proved the publication) we cannot preciſely ſay, there being an *Hiatus* * in that part of the charge in the trial at large, which we regret, as the reader will hereafter perceive, that it became a ſubject of contention between the Court and the Defendant's Counſel.

Mr. Juſtice Boyd and Mr. Juſtice Downes expreſſed their concurrence in the opinion that had been delivered by the Chief Juſtice.

After the jury heard the charge, they retired, and in a few minutes returned with a verdict GUILTY. †—Mr. Rowan was then ordered into cuſtody; and was accordingly conveyed to priſon, attended by both the Sheriffs, and a formidable array of horſe aud foot guards.

TUESDAY, *4th Feb.* 1794.

Mr. Rowan being brought to the bar, his Counſel moved to have the verdict ſet aſide, and a new trial awarded upon the four following grounds, ſupported by affidavits:—

1. That Lyſter, on whoſe teſtimony ſolely the verdict was founded, deſerved not the leaſt credit.

2. That one of the jurors harboured the deepeſt malignity and prejudice againſt the traverſer, and had declared his enmity and prejudice before he was ſworn.

That

* "The Editor is here under a neceſſity of introducing an *Hiatus*, the Printer having refuſed to print this part according to the notes furniſhed to him by the Editor."—See Trial at large, p. 83.

† When this verdict was firſt brought in, there was a loud clap of approbation in the outer hall, from a miſconception that the jury had acquitted Mr. Rowan—but when the verdict was repeated, and the word *guilty* underſtood, the clap was changed into loud hootings, and hiſſings, and groans that laſted till the Court broke up.

3. That the Sheriff, who summoned and arrayed the jury, was partial, having purposely impannelled men hostile to Mr. Rowan and his principles.*

4. That the Judge had mis-directed the jury.

Mr. CURRAN.——It was an early idea, that a verdict in a criminal case could not be set aside, *inconsulto regæ*, but the law had stood otherwise without a doubt, to impeach its principle for the last two reigns.

Common sense would say, that the discretion of the court should go at least as far in criminal as in civil cases, and very often to go no further would be to stop far short of what was right, as in those great questions where the prosecution may be considered either as an attempt to extinguish liberty, or as a necessary measure for the purpose of repressing the virulence of public licentiousness and dangerous faction; where there can be no alternative between guilt or martyrdom; where the party prosecuted must either be considered as a culprit sinking beneath the punishment of his own crimes, or a victim sacrificed to the vices of others. But when it clearly appears, that the party has fallen a prey to a persecuting combination, there remains but one melancholy question, *how far did that combination reach?*

There have been two cases lately decided in this very Court, the King and Pentland, where the motion was made and refused, and the King and Bowen, where it was granted; both of which shew, that captious sophistry, and technical pedantry had here, as well as in England, given way to liberal and rational enquiry; and that the court would not now, in their discretion, refuse a motion of this kind, unless they could, at the same time, lay their hands upon their hearts, and say, they believed in their consciences that justice had been done; such was the manly language of one of their lordships (Mr. Justice Downes); and such the opinion of the Court on a former occasion.

He then cited 7 Modern 57. as referred to in Bacon tit. *Trial*, to shew, that where there was good ground of challenge to a juror, not known at the trial, it was sufficient cause for setting aside the verdict.

In England they have a particular act of parliament, entitling the party to strike a special jury to try the fact, and then he has time between the striking and the trial, to question the propriety of that jury: here my client had no previous information, till the instant of trial, who his jurors were to be.

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* Considering every circumstance, it was very fair to conclude, that the Sheriff would have a *strong partiality* for Government, upon the most obvious principle in the world, ☞ INTEREST.—Mr. G. was then a Captain of Militia, had a lucrative office in the Custom-house, and was conductor of a Government News paper!

There are certain indulgences granted at times, perhaps by the connivance of humanity, which men, who are not entitled to demand them in an open court, obtain nevertheless by side-long means, and perhaps the little breach which affords that light to the mind of the man accused, is a circumstance which the Court would feel pain, even if called upon, to say, should in all cases be prevented; but to overturn principles and authorities, for the purpose of oppressing the subject, is what this Court, I hope, will never do.

The first of the affidavits I shall consider, is that of the traverser. I do not recollect whether it states the Sheriff, in avowed terms, to be an emissary or a hireling agent of the Castle, therefore do not state it from the affidavit; but he swears, "that he does believe, that he did labour to bring into the box a jury full of prejudices and of the blackest impressions," instead of having as they ought, fair and impartial minds, and souls like white paper.

This Sheriff now stands in Court; he might have denied it if he would, he had an opportunity of answering it; but he has left it an undenied assertion—he was not certainly obliged to answer it, for no man is bound to convict himself. But there is a part of that charge which amounts, at least, to this, "Your heart was poisoned against me, and you collected those to be my judges, who, if they could not be under the dominion of bad dispositions, might be at least the dupes of good." The most favourable thing that can be said is this, you sought to bring against me honest prejudices, but you brought against me wicked ones. The very general charge, that he sought for persons, who he knew were most likely to bring prejudices with them into the jury box, is a part of the affidavit, that it was incumbent on him to answer if he could.

I do not contend, that what is charged in the affidavit, would have been a ground of principal challenge to the array; but hold it to be the better opinion, that a challenge to the array for favour, does well lie in the mouth of the defendant.

The antient notion was, you shall not challenge the array for favour, where the King is a party; the King only can challenge for favour, for the principle was, that every man ought to be favourable to the Crown; but, thank God, the advancement of legal knowledge, and the growing understanding of the age, has dissipated such illiberal and mischievous conceptions.

But I am putting too much stress upon such technical, discarded, and antiquated scruples. The true question has been already stated from the authority of Mr. Justice Downes, and that question is, "Has justice been done?"

Is it a matter, upon which scarce any understanding would condescend to hesitate, whether a man had been fairly tried, whose

whose triors had been collected together by an avowed enemy, whose conduct had been such, as to leave no doubt that he had purposely brought prejudiced men into the box.

In every country, where freedom obtains, there must subsist parties. In this country and in Great Britain, I trust, there never will be a time, when there will not be found men zealous for the government of the day, and men always zealous and enthusiastic in the cause of popular freedom and of the public rights. If, therefore, a person in public office suffers his prejudices, however honestly anxious he may be for a prosecution carried on by those to whom he is attached, to influence him so far as to choose men, to his knowledge, devoted to the principles he espouses, it is an error which a high court of judicature, seeking to do right and justice, will not fail to correct.

A Sheriff, in such a case, might not have perceived the partiality of his conduct, because he was surveying it through the medium of prejudice and habitual corruption. But it is impossible to think that this Sheriff meant to be impartial; it is an interpretation more favourable than his conduct will allow of; if he deserves any credit at all, it is in not answering the charge made against him: At the same time, by not anwering it, he has left unimpeached the credit of the charge itself.

[Here some altercation took place, and Lord Clonmell, Chief Justice, interposed, saying, that the counsel had certainly a right to argue it upon the ground, that the Sheriff was biassed, and did return a jury prejudiced against the traverser.]

Mr. CURRAN was then proceeding to observe upon the expression of one of the jury, sworn to in another affidavit, "That there would be no safety in the country, until the defendant was either hanged or banished"—When it was asked by the Court, Whether the time of its coming to the knowledge of the traverser, that the Sheriff was biassed, was stated in his affidavit?

Mr. Curran answered, he was in prison, and could not have the attendance of those Counsel, whose assistance he had in Court; and besides, from the nature of the circumstances, it was impossible he could have been sufficiently apprized of its consequences, for he saw not that pannel till the day of the trial, when he could not have had time to make any enquiry into the characters, dispositions, or connections of the jury.—Mr. Curran then reverted to his argument on the expression of the Juror.

If triors had been appointed to determine the issue, favourable or not, what would have been their finding? Could they say upon their oaths, that he was not unfavourable to that party, against whom he could make such a declaration?

Favour is not cause of principal challenge, which if put upon a pleading, would conclude the party. Favour is that which makes the man, in vulgar parlance, unfit to try the question. And as to the time these facts came to his knowledge, he has sworn that he was utterly ignorant of them at the time of his coming into Court to take his trial.

I will not glance at the character of any absent noble person, high in office, but let it be remembered, "that it is *a government prosecution*," and that the witness has, from a low and handicap situation, scraped himself into preferment, perhaps, for I will put the best construction upon it, by offering himself as a man honestly anxious for the welfare of his country; in short, it is too obvious to require any comment, what the nature of the whole transaction has been, that he had got his commission as a compensation, *pro labore emplendendo*, and came afterwards into Court to pay down the stipulated purchase!

Had this then been an unbaissed jury, was there not something in all these circumstances, that might have afforded more deliberation, than that of one minute per man, for only so long was the jury out; and had this been a fair witness, would he have lain down under a charge, which if true, ought not only to damn this verdict, but his character for ever? What would a corps of brother Officers think of a person charged, upon oath, with the commission of two wilful perjuries, and that charge remaining undenied? Here is an undenied charge, in point of fact, and although I do not call upon the Court to say, "that this is a guilty and abominable person," yet the suspicion is strongly so, and must be so considered. This was at least a verdict, where the evidence went to the jury under slighter blemishes than it will if my client has the advantage of another trial, for then he will be put out of the power of man to doubt that this witness has been perjured—he had notice, both here and at the trial, of the aspersions on his character, and yet he has not called a human being to say that he entertained a contrary opinion of him.

Was he known any where?—Did he crawl unobserved to the Castle? Was it without the aid or knowledge of any body, that that gaudy plumage grew on him, in which he appeared in Court? If he was known for any thing else than what he is stated to be, it was, upon that day, almost a physical impossibility, in a Court-house, which almost contained the country, not to have found some person, to give some sort of testimony respecting his general character. For though no man is bound to be ready at all times to answer particular charges, yet every man is supposed to come with his public attestation of common and general probity. But he has left that character, upon the merits of which my client is convicted, unsupported, even by his own poor corporal swearing. You are called upon, then,

to

to say, whether upon the evidence of a being of *this* kind such a man as *that* is to be convicted, and sentenced to punishment, in a country where humanity is the leading feature, even of the criminal law.

He then observed upon the second witness —A man coming to support the credit of another collaterally, is himself particularly pledged ; then what was his testimony ? He did not know whether Mr. Giffard was concerned in the News-paper ! ! !— And now, you have the silence of Giffard himself, in not answering Mr. Rowan's affidavit to contradict that. And next, he did not know whether his own cousin-german was the relation of their common uncle ! ! !—I call upon you, my Lords, in the name of sacred Justice, and your Country, to declare, whether the melancholy scenes and murderous plots of the Meal-tub and the Rye-house * are to be acted over again—And whether every Titus Oates that can be found, is to be called into your Courts, as the common vouchee of base and perjured accusation ?

He then proceeded to another ground, namely, that the direction of the Court was not, as he conceived, agreeable to the law of Ireland. The defence of my client (he added) was rested upon this, that there was no evidence of the fact of publication, upon the incredibility of the fact, and the circumstances of discredit in the character of the witness ; yet the Court made this observation : " gentlemen, it scarcely lies in the mouth of Mr. Rowan to build a defence upon objections of this kind to the characters of witnesses, because the fact was public ; there were many there ; the room was crowded below ; the gallery was crowded above ; and the publicity of the fact enabled him to produce a number of witnesses to falsify the assertion of the prosecutor, if in fact it could be falsified !"—Is that the principle of criminal law ? Is it a part of the British law, that the fate of the accused shall abide, not on the positive establishment of guilt by the prosecutor, but the negative proof of innocence by himself? Why has it been said in foolish old books, that the law supposes the innocence of every man 'till the contrary is proved ? How has it happened, that that language has been admired for its humanity, and not laughed at for its absurdity, in which the prayers of the Court are addressed to Heaven for the safe deliverance of the man accused ?— How comes it that so much public time is wasted in going into evidence of guilt, if the bare accusation of a man did call upon him to go into evidence of his innocence ? The force of the observation is this, Mr. Rowan impeaches the credit of a witness, who has sworn that he saw him present, and doing certain acts at a certain meeting ; but it is asked, has he substantiated that discredit, by calling all the persons, who were pre-

* See the hiſtory of the tyrannical and licentious reign of Charles II. when all the machinery of State plots and perſecutions were played off with wonderful dexterity.

present, to prove his absence from that meeting, which is only stated to have existed, by a witness whom he alledges to have perjured himself; I call upon the example of judicial character, upon the faith of that high office, which is never so dignified as when it sees its errors and corrects them, to say, that the Court was for a moment led away, so as to argue from the most seductive of all sophisms, that of the *positio principii*.

See what meaning is to be gathered from such words; we say, the whole that this man has sworn is a consummate lie; shew it to be so, says the Court, by admitting a part of it to be true. It is false swearing: it is a conspiracy of two witnesses against this defendant—well, then it lies upon him to rebut their testimony, by proving a deal of it to be true!—Is conjecture then, in criminal cases, to stand in the place of truth and demonstration? Why were not some of those—(I will strip the case of the honour of names which I respect)——why were not some of those, who knew that these two persons were to be brought forward, and that there were to be objections to their credit—if, as it is stated, it happened in the presence of a public crowd, rushing in from motives of curiosity, why were not numbers called on to establish that fact?—On the contrary, the Court have said to this effect: Mr. Rowan, you say you were not there; produce any of those persons with whom you were there, to swear you were not there!—You say it was a perjury; if so, produce the people that he has perjured himself in swearing to have been there! But as to your own being there, you can easily shew the contrary of that, by producing some man that saw you there! You say you were not there? Yes. There were one hundred and fifty persons there: now produce any one of those to swear they saw you there!

It is impossible for the human mind to suppose a case, in which infatuation must have prevailed in a more progressive degree, than when a jury are thus, in fact, directed to receive no refutation nor proof of the perjury of the witness, but only of his truth. We will permit you to deny the charge by establishing the fact; we will permit you to prove that they swore falsely to your being there, by producing another witness to prove to a certainty that you were there.—[Interrupted by Lord Clonmell.]

Lord Clonmell, *Chief Justice*—The reasoning of the Court was strong upon that point; this is a transaction stated by the witness to have happened in open day in a crowded assembly in the capital, amidst a number of persons dressed in the uniform of *Hamilton Rowan*. There has been nothing suddenly brought forward to surprize the traverser, yet what has he done? did he offer as in the common course to prove an *alibi*? It is stated to

be

be at such a day; the witness swears at such an hour—the place is sworn to have been full of people, of Mr. Rowan's friends: but if there was even a partial assembly, it would be easy still to produce some one of those persons who were present to say, that the fact did not happen which has been sworn to, or if you say Mr. Rowan was not there, it is easier still to prove it by shewing where he was—as thus: I breakfasted with him, I dined with him, I supped with him; he was with me, he was not at Pardon's—disprove that assertion by proving an affirmation inconsistent with it.

Mr. CURRAN.——I beg leave to remind the Court of what fell from it. "He may call" said the Court "any of those persons; he has not produced one of them"—upon this, I think, a most material point does hang, "He might have called them, for they were all of his own party."

Lord CLONMELL.——That is if there were such persons there; or, if there was no meeting at all, he might have proved that.

Mr. CURRAN.—There was no such idea put to the jury, as whether there was a meeting or not: it was said they were all of his party, he might have produced them, and the non-production of them was a "volume of evidence" upon that point. No refinement can avoid this conclusion, that even as yourLordship states the charge, the fate of the man must depend upon proving the negative.

Until the credit of the witness was established, he could not be called upon to bring any contrary evidence. What does the duty of every Counsel dictate to him, if the case is not made out by his adversary or prosecutor? Let it rest; the court is bound to tell the jury so, and the jury are bound to find him not guilty. It is a most unshaken maxim, that *nemo tenetur prodere se ipsum*. And it would be a very inquisitorial exercise of power, to call upon a man to run the risque of confirming the charge, under the penalty of being convicted by *nil dicit*.——Surely, at the criminal side of this Court, as yet, there has been no such judgement pronounced.——It is only when the party stands mute of malice, that such extremes can be resorted to. I never before heard an intimation from any judge to a jury, that bad evidence, liable to any and every exception, ought to receive a sanction from the silence of the party. The substance of the charge was neither more nor less than this: that the falsehood of the evidence shall receive support and credit from the silence of the man accused. With anxiety for the honour and religion of the Law, I demand it of you, must not the jury have understood that this silence was evidence to go them; is the meaning contained in the expression "a volume of evidence" only insinuation? I do not know any man would

would be safe. I do not know what any man could do to screen himself from persecution; I know not how he could be sure even when he was at his prayers before the throne of Heaven, that he was not passing that moment of his life, on which he was to be charged with the commission of some crime, to be expiated to society, by the forfeiture of his liberty or of his life. I do not know what shall become of the subject, if a jury are to be told, that the silence of the man charged is a "volume of evidence," that he is guilty of the crime;—where is it written? I know there is a place where vulgar phrenzy cries out, that the public instrument must be drenched in blood; where defence is gagged, and the devoted wretch must perish. But even there the victim of such tyranny, is not made to fill, by voluntary silence, the defects of his accusation, for his tongue is tied, and therefore no advantage is taken of him by construction; it cannot be there said, that his not speaking is a volume of evidence to prove his guilt.

But to avoid all misunderstanding, see what is the force of my objection: is it that the charge of the Court cannot receive a practicable interpretation, that may not terrify mens minds with ideas such as I have represented? No—I am saying no such thing. I have lived too long and observed too much not to know, that every word in a phrase is one of the feet upon which it runs, and how the shortening or lengthening of one of those feet will alter the progress or direction of its motion. I am not arguing, that the charge of the Court cannot by any possibility be reconciled to the principles of the law; I am agitating a bigger question; I am putting it to the conscience of the Court, whether a jury may not have probably collected the same meaning from it, which I have affixed to it, and whether there ought not to have been a volume of explanation, to do away the fatal consequences of such a mistake.

On what sort of a case am I now speaking?—on one of that kind, which it is known has been beating the public heart for many months: which, from a single being in society, has scarcely received a cool or tranquil examination. I am making that sort of application, which the expansion of liberal reason and the decay of technical bigotry have made a favoured application.

In earlier times it might have been thought sacrilege to have meddled with a verdict once pronounced; since that, the true principles of justice have been better undstood; so that now, the whole wisdom of the whole Court will have an opportunity of looking over that verdict, and setting right the mistake which has occasioned it.

Mr. CURRAN made other observations, either to corroborate his own or to answer the opposite counsel, of which it is impos-

possible to give an exact detail; and concluded thus:—You are standing on the scanty isthmus that divides the great ocean of duration; on one side of the past, on the other of the future; a ground, that while you yet hear me, is washed from beneath our feet. Let me remind you, my Lord, while your determination is yet in your power, *dum versatur adhuc intra penetralia Vestae*, that on that ocean of future you must set your judgement afloat. And future ages will assume the same authority, which you have assumed; posterity feel the same emotions which you have felt, when your little hearts have beaten, and your infant eyes have overflowed, at reading the sad history of the sufferings of a Russel or a Sidney. *

[The concluſion of Mr. Curran's ſpeech drew forth loud and repeated plaudits, to the great diſpleaſure of the Judges, Sheriff G. &c.]

Mr. Curran was oppoſed by the Attorney General, Mr. Frankland and Mr. Prime Serjeant, each of whom laboured much, and cited many authorities to ſhew, that no one of the grounds taken by the oppoſite Counſel was tenable.

After hearing the arguments of the learned Counſel, the Court adjourned for the purpoſe of adviſing upon the caſe, until

FRIDAY, *7th Feb.* 1794.

The Court met agreeably to adjournment, and having conſidered and adviſed of what had been urged by the Counſel on either ſide, over-ruled the motion for a new trial.

As to the firſt objection, they were of opinion, that it came too late; that permitting the teſtimony of a witneſs to be impeached after trial, would be a general invitation to ſuch perjury as could not be puniſhed by indictment; and that it would be contrary to all former and eſtabliſhed precedents—See 7 Mod. 54--1 Term Rep. 7 17—and 2 Term Rep. 1 13.

The ſecond objection, to a juryman, the Court were of opinion was completely removed by the authority of 2 Haw. P. C. 5 89.

With reſpect to the third objection, "Is it in law (aſked Lord Clonmell) a ground of challenge, that a man conducts what is conſidered a Government Newſpaper?—What is a Government newſpaper in legal eſtimation?—*a chimera of the brain!*"—as to that part of the objection to the Sheriff, on the ground of his holding a lucrative office at the will of the Crown, "The office of Sheriff (ſaid his Lordſhip) is under the Crown; and if holding an office under the Crown diſqualify a man, it involves this palpable abſurdity, that the very grant which makes him, diſqualifies him from acting."—With regard to Mr. Rowan's affidavit, that the Sheriff labored to return a prejudiced pannel, the Court decided, that it came too late to be noticed, that it ſhould have been made before the jury were ſworn.

Laſt-

* Here again is a fine alluſion to the ſad doings in Charles II's time.—An impartial hiſtory of that reign, alone, would contain volumes of inſtruction.

Laſtly, the Court were clear in the opinion, that they had not miſ-directed the jury in any reſpect whatever.

Mr. ATTORNEY GENERAL.——My Lords, it is my duty to apply to the Court to pronounce ſentence upon the traverſer.

Mr JUSTICE BOYD.——Archibald Hamilton Rowan, you have been found guilty by a jury of your country, of publiſhing a falſe, wicked, and ſeditious libel, of and concerning the government and conſtitution of this kingdom, with an intent to excite and diffuſe among the ſubjects, diſcontents, jealouſies, and ſuſpicions of the King and his government; to raiſe dangerous ſeditions and tumults; to throw the government of this country into ſcandal and diſgrace; to excite the people to make alterations in the government, and to overawe and intimidate the legiſlature by an armed force. This charge was exhibited in an information filed againſt you by his Majeſty's Attorney General, and the whole matter was, as it ought to be, left to the jury, who have found, firſt, that the inſtrument ſet forth is a libel;—ſecondly, that you did publiſh it;—thirdly, that you publiſhed it with the intentions ſtated in the information. The libel is contained in a printed paper, intitled, "*An Addreſs from the Society of United Iriſhmen at Dublin, to the Volunteers of Ireland.*" This publication followed and animadverted upon a proclamation publiſhed by order of the Lord Lieutenant and council, to which you have attributed an intention to create internal commotion, to ſhake the public credit, and to blaſt the volunteer honour. This proclamation has had the ſanction of both Houſes of Parliament. At this period, and it is upon the records of parliament, the great body of the Roman Catholics were ſeeking relief; they preſented dutiful addreſſes, ſtating they were anxious to be liberated from reſtraints they laboured under;—but you addreſſed them to take up arms, and by force to obtain their meaſures; they were palpably to be made a dupe to your deſigns, becauſe you ſay you will proceed to the accompliſhment of your beloved principles, UNIVERSAL EMANCIPATION and REPRESENTATIVE LEGISLATURE.—Seduction, calumny, and terror are the means by which you intend to effect them. The Volunteers are to become inſtruments in your hands, and deſpairing to ſeduce the army, you calumniate them with the opprobious epithet of mercenaries. You ſay ſeduction made them ſoldiers, but nature made them men.—You ſtigmatize the legal eſtabliſhments for the preſervation of order, as a notorious police, and the militia the pride and ſtrength of the kingdom, are to be looked upon as ſuſpicious. You called upon the people to arm—all are ſummoned to arms to introduce a wild ſyſtem of anarchy, ſuch as now involves France in the horrors of civil war, and deluges the country with blood. It is happy for you, and thoſe who were to have been

been your inſtruments, that they did not obey you. It is happy for you that this inſidious ſummons to arms was not obſerved, if it had, and the people with force of arms had attempted to make alterations in the conſtitution of this country, every man concerned would have been guilty of High Treaſon.

The ſentence of the Court is——

Mr. ROWAN.——My Lords, I am perfectly ſenſible of the forbearance of the Court in this trial, and particularly during the arrangement of a long affidavit; I hope therefore that I ſhall be allowed a few words, either in mitigation, or in whatever other character I may have a right to addreſs the Court, before they pronounce their ſentence—(Mr. Juſtice Boyd deſired Mr. Rowan to proceed.)—I need not apologiſe, my lords, for any little errors I may fall into, for I am known to be a man unlearned in the forms of theſe Courts, but I ſhall as plainly, and ſhortly as I can, ſtate every thing as it ſtruck my ear and underſtanding. My lord, if I underſtood rightly, the 3 heads under which this matter has been argued are, *the evidence*, the *jury*, and *the ſheriff;* I did hope that the objections taken to theſe, by my counſel, would have ſet aſide the verdict.

There are ſome parts concerning *the evidence*, in which the Court, as well as the proſecutor, ſeem to have been miſtaken. They have taken it for granted, that I knew the perſon who was to give evidence againſt me; and it was aſſerted by the bench that I had ranſacked Connaught for evidence againſt the character of *Lyſter*.* I do not know what impreſſion this might have made upon ſome of the jury; it was indeed corrected at the time, but it was not ſufficiently done away; it is plain it was not, for Mr. Solicitor General who was preſent the whole time, whoſe duty it is, and whoſe inclination he declared it to be, to liſten with attention and deference to every thing which fell from the bench, has ſince repeated the ſame aſſertion. I certainly did ſuſpect, that the perſon who has now been brought forward, was the man who had lodged the informations againſt me; but I hoped that my trial had been poſtponed by the proſecutor, from a knowledge of his character, and a wiſh to procure more credible teſtimony, as to the fact of the diſtribution. I had certainly every reaſon to ſuppoſe this had been the caſe, as I knew that ſeveral of my friends, men who belong to the old Volunteer Corps, and who probably were at that meeting, if there were any ſuch aſſembly, had been ſummoned on this trial by the proſecutor. They attended in the Court, but were never

* To the credit of the Britiſh army it ſhould be mentioned, that when the informer Lyſter joined his regiment, the Officers of the Corps were ſo exceedingly ſhy, that they actually put the noble Captain "into Coventry!" The conſequence was, that he was obliged to ſell out, and contrive to enjoy his *honourable* wages in another capacity.

never called upon—I know the charge exhibited againſt me by Mr Lyſter would have fallen to the ground, I had been certain of an acquittal.

As to the Jury, my Lor', I can conceive ſome of them to have been very honourable men, and yet prejudiced, much prejudiced; I did not conceive, however, that any man would have gone into that box, taking an oath to try me impartially, yet having publicly declared an enmity againſt me. It was certainly very ingenious in one of the crown lawyers to ſuppoſe, that the jurors who uſed thoſe expreſſions, might have thought at that time that I had been guilty of murder, or ſome crime, and had been diſabuſed before the trial came on — but, without recurring to my general character, that ſuggeſtion, in my opinion, falls to the ground, for the converſation was on the ſubject of the Volunteers; and it is for an addreſs to the Volunteers that I am now proſecuted. I certainly did wiſh for a revival of the Volunteers, and I did attempt it: I thought they had already done honour to the nation, that they had been acknowledged honourable by the legiſlature; this I did attempt, if this be a crime. It has been ſaid by one of my proſecutors, that it was not with the jurors, but with their verdict that I was diſcontented; I ask, what was my conduct when the verdict was delivered in? Did that prove a diſcontent to the verdict? No. I thought it a ſevere one, unfounded in evidence, but I called for the ſentence of the Court; I was ready to abide by that ſentence; and it was not until my return to Newgate, when I found my priſon doors crowded with utter ſtrangers to me, each recapitulating inſtances of declared partiality in the jurors, and further acts of infamy in the evidence, that I had thoughts of ſetting aſide their verdict.

As to the Sheriff, and the circumſtance of my not having made ſome application to the Court prior to my affidavit of the day before yeſterday, and the queſtion of *when* I became acquainted with his partiality; the fact is, that it was with the utmoſt reluctance I now ſtood forward, to accuſe a man of what muſt, in my opinion, render him infamous. I well knew that in every public act of my life ſince I came to this country, trifling as they were, I had been calumniated by him; but that was in his province of Editor; he is now become the repreſentative of the executive power—is he not?—I thought the ſtation he now holds, would give him ſome pride, inſtill ſome ſpark of honour into him, and that, relinquiſhing that conduct and proceedings calculated to procure a greater ſale for his journal, in ſome corners of the city, he would conſider himſelf bound to return a jury which ſhould be unſuſpected. Was it likely that he did not know of theſe declarations of the jurors? It is not probable. Before the recognizances were given up, while I was out on bail, the death of a near relation obliged me to

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go to England, where my attendance was neceſſary for the arrangement of my private affairs; I returned however at great inconvenience, and ſome pecuniary loſs, to attend this Court; yet, during my abſence, I was branded by this man as a fugitive; and here permit me to obſerve, that your lordſhip, in your recapitulation of this trial, omitted to mention the motion made for me by my friend Mr. Blennerhaſſet, that the examination againſt me ſhould be forthwith returned. Day after day I had attended the Court; the little enquiry I could make, informed me, that no ſuch examination had gone up to the Jury. I believe it was on the laſt day of the term, or it was not motion day, or ſomething of that kind, and there was no order of the Court made. It had been ſuggeſted to me by ſome of my friends, when notice for this trial was ſerved upon me, that I ought to attempt to put it off; but what would have been the conſequence? Your lordſhip has ſaid, that *I had called for, that I had provoked this trial*, that *I had complained* it was not brought forward. It is true I *did call for*, I did *provoke* this trial; I have *complained* that it was not brought forward. I wiſhed to be brought to trial, but I did wiſh alſo to be tried by an impartial jury, ſummoned by an impartial man; ſuch I thought the Sheriff of that time to be, although I was not one of his acquaintance. The very words your lordſhip uſed, ſhew why I did not put off my trial. What would then have been ſaid by that Journal, which is perpetually ſtigmatizing my conduct, and vilifying my private character? It would have repeated, what was ſaid in another country, that I was "an infamous wretch, who had fled from the puniſhment that awaited me *." But ſtill thoſe friends urged me to put off this trial: The Sheriff is your enemy—No—I have called for trial, I will truſt to his oath of office: though, as Editor of a Newſpaper, he has acted thus, yet when bound by oath "to return pannels of perſons able and ſufficient, and not ſuſpected or procured, and to do juſtice impartially," (theſe are merely the words of the oath of a county Sheriff)—I hoped he would riſe ſuperior to his editorial capacity, and act with juſtice. Nay, even in my firſt affidavit, I did not throw out this imputation.

As to the Sub-ſheriff, I know him not, but I am informed, that the Sheriff himſelf returned the whole pannel upon this occaſion; contrary to the uſual cuſtom, as I am informed:—Why this was ſo, I know not. I cannot dive into the breaſt of any man: God forbid I ſhould be capable of diving into his.——My Lord, perhaps what I am going to obſerve may be improper, but I once thought that, *Intention conſtituted Guilt*. I thought I heard from the Bench, that my intention did not ſignify.

Lord

* See the Lord Advocate's ſpeech on Mr. Muir's trial in Edinburgh.

Lord CLONMELL.——You have ſaid nothing improper yet, Sir; go on, you do not ſeem to recollect the idea perfectly.

Mr. ROWAN.——It was not from your Lordſhip.

Mr. Juſtice DOWNES.——Certainly it is an opinion no judge could hold.

Mr. ROWAN.——I have been miſtaken then; it was ſomething like it; it ſtruck me ſo. As to the paper it has been ſaid to come from a *Society of United Iriſhmen*. One of my witneſſes was aſked, was he an *United Iriſhman*. I have heard much of *United Iriſhmen*, much calumny here and elſewhere; I avow myſelf to be one, my name has appeared to ſeveral of their publications; I glory in the name. On entering that Society, I took a teſt, by which I am bound to ſeek for the emancipation of every claſs of my fellow-citizens, and to procure (by ſpreading information, for that is the only mode a few men aſſembled in Back-lane can adopt) a Reform in the Repreſentation of the People*, a Reform, the neceſſity of which has been allowed even in Parliament. Theſe are our objects, objects which I am bound to purſue to their completion. As to the paper, I honour the head that conceived it, and love the hand that penned it. Much ſtreſs has been laid upon the words UNIVERSAL ENANCIPATION AND REPRESENTATIVE LEGISLATURE; it may be owing to a want of logical preciſion in me, but I do not conſider theſe words as carrying the meaning which has been imputed to them. I did imagine that the Britiſh Conſtitution was a Repreſentative Legiſlature; that the people were repreſented by the Houſe of Commons; that the Lords repreſented the territory, the property; and that the King repreſented the ſtrength of the State, the power of the whole, placed in his hands for the benefit of the whole. As a perſon, as a man, I know nothing of the King; I can know nothing of him, except as wielding the force of the nation, to be exerciſed for the benefit of the nation; and if ever that force ſhould be miſapplied, or abuſed, it then remains for the people to decide in what hands it ought to be placed. †

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* "It being the intereſt as well as the intention of the People to have a fair and equal Repreſentation, whoever brings it neareſt to that, is an undoubted friend to Government, and cannot miſs the approbation of the community'" ——*Locke on Government, ſect.* 158.

† This doctrine of a power in the people providing for their ſafety anew, by a new legiſlature, when their legiſlators have acted contrary to their truſt, is the beſt fence againſt rebellion, the moſt probable means to hinder it.—*Locke, ſect.* 26. —— When King Charles's deluded brother attempted to enſlave the nation, he found it was beyond his power; the people both could and did reſiſt him; they obliged him to quit his enterprize and his throne together—*Blackſtone, book* 4.

I really feel myſelf in an aukward ſituation, thus declaring my ſentiments, ſeeing intentions different from thoſe both of the author and myſelf are fixed upon that paper, for the diſtribution of which I am perſecuted. From my ſituation however, having an independent fortune, eaſy in my circumſtances, and with a large family, inſurrection of any ſort would ſurely be the laſt thing I could wiſh for. I aſk no favour, but I ſubmit myſelf to the clemency and the juſtice of the Court, and I truſt that whatever may be their ſentence, I ſhall bear it with becoming fortitude.

Lord CLONMELL—I have conferred with my brethren upon what has fallen from you, confeſſedly in mitigation and with that view. There are two facts which you ſeem to inſiſt upon as new. If it made for you, that Mr. Haſſet made the motion you ſtate, I willingly adopt it. If I had known it in giving the hiſtory of this caſe, I ſhould not have omitted that or any thing elſe done in this Court. You mentioned that the informations ſhould have been returned; they were returned into the Crown office.

Mr. ROWAN.—My Lord, I meant they were not returned to the Grand Jury.

Lord CLONMELL.——The proceeding was not by way of Bill of indictment, therefore what you deſire could not have been adopted. The proceedings here were by information *ex officio*, and when the informations were lodged in the Crown office, which I am inſtructed to ſay, was the firſt day of Hilary Term, 1793, the firſt day the Court ſat afterwards, the information was filed and the other proceedings had. As to the meaning of the libel, I owe juſtice to every man, and here and every where I have ſaid, that no inference can be drawn from any conſtruction in your favour that was omitted. I think I will be juſtified in ſaying, that you were well and ably defended by your Counſel. Nothing has fallen from you that affected the minds of the Court in mitigation, to change the judgement which we have thought proper ſhould be pronounced upon you. I ſhall not adopt any idea, or ſuffer any idea to ariſe in my mind, from what you laſt let fall from you, to increaſe that puniſhment. The judgement of this Court will therefore be pronounced, as is the practice in Weſtminſter Hall, by the ſecend judge of the Court.—It ſhall be pronounced by my brother Boyd.

Mr. JUSTICE BOYD ——The ſentence of the Court is, That you Archibald Hamilton Rowan, do pay to his Majeſty a fine of Five Hundred Pounds, and be impriſoned for two years, to be computed from the 29th of January, 1794, and until that fine

fine be paid; and to find ſecurity for your good behaviour for ſeven years, yourſelf in the ſum of Two Thouſand Pounds, and two ſureties in one Thouſand Pounds each.

P. S.—On the night of the 1ſt of May, Mr. Rowan effected his eſcape from priſon. He made his way to the coaſt, where he prevailed upon two fiſhermen * to take him into their boat, and put to ſea; after many eſcapes from the dangers of a voyage in ſo ſmall a veſſel, and of being taken by the Engliſh cruiſers, he was ſafely in landed in France; from thence he came to America. It is almoſt needleſs to mention, that Mr. Rowan's mild and proper conduct in this country was ſuch, that it extorted the approbation even of thoſe who were adverſe to his principles,—Latterly he reſided with his family at Hamburgh.

* Amongſt ſo many inſtances of venality and treachery, it muſt be a relief to the mind to meet one of honourable fidelity in men of low degree. —Immediately on Mr. Rowan's eſcape, Government diſperſed proclamations all over the country, offering a very conſiderable ſum for apprehending him.—Theſe fiſhermen had ſeen the proclamation, and knew the great reward that was within their reach, and the puniſhment they were liable to for aiding Mr. Rowan's eſcape, yet they fulfilled their promiſe at the hazard of their lives and liberty.

THE

TRIAL

OF

The Rev. William Jackson

FOR

HIGH TREASON.

KING's BENCH.

ON the 28th of April 1794, the Rev. William Jackson was arrested and committed to prison, under a warrant issued by Lord Chief Justice Clonmell; and on the 23d of June, the Grand Jury for the county of the City of Dublin, found an Indictment against him for High Treason, of which the following is an abstract:—

First Count. — That Wm. Jackson, Clerk, on the 3d day of April, 1794, being a false traitor, did compass and imagine the death of the King, and did traiterously and feloniously intend the said King to kill, murder, and put to death.——*Overt Act.* That he did come to Ireland for the purpose of procuring information as to the state of the Government, and the dispositions of the People; which information he did attempt to transmit to persons exercising the powers of government in France (with whom his Majesty the King was then at war), in order to enable the French to effect an invasion of Ireland.

Second Count. — That the said Wm, Jackson being a false traitor, did consult and conspire with divers others to levy and make insurrection, rebellion, and war.——*Overt Acts.* 1st, That he did excite the persons exercising the powers of government in France to levy war within Ireland. 2d, That he did endeavour to persuade Theo. Wolfe Tone to go to France in order to represent to the French, that the people of Ireland were dissatisfied with their government, and to incite them to invade Ireland. 3d, That he endeavoured to persuade divers persons, to the jurors unknown, to go to France, &c. 4th, That he did meet and agree with divers persons, &c. that some person should be sent to France, &c. 5th, That he wrote a letter to be sent to Wm. Stone of London, desiring him to inform the French, that he and divers others had an intention of sending some person to convince them of the readiness of the people of Ireland to aid and co-operate with them, the French, in effecting an invasion of Ireland. 6th, Nearly similar to the last. 7th, That he did deliver the said letters into the post-office. 8th, That he wrote a letter to be sent to Benj. Beresford in foreign parts, requesting him to inform a certain other per-

perſon, that an account of the diſpoſition of the people of Ireland was ſent to him, to be communicated to the French Government. 9th, That the ſaid letter was ſent and delivered into the poſt-office. 10th, That he did write a letter, &c. (ſee Letter, No. 5.) 11th, That the ſaid letters were delivered into the poſt-office. 12th and 13th, Nearly ſimilar to the 10th and 11th.

THIRD COUNT. — That the ſaid Wm. Jackſon unlawfully and traiterouſly was adhering, aiding, and comforting the perſons exerciſing the powers of government in France, then being the enemies of the King.— The *Overt Acts* laid in this Count, were the ſame as thoſe in the next preceding one.

THURSDAY, 23*d April* 1794.

At half past ten the Court ſat, conſiſting of Earl Clonmell, Chief Juſtice; Mr. Juſtice Downes, and Mr. Juſtice Chamberlaine—Mr. Juſtice Boyd being abſent.

The Rev. William Jackſon was brought from Newgate, eſcorted by an officer's guard (which continued in the Hall during the trial, and prevented the crowd from preſſing into the Court) and was put into the Bar. The priſoner having declared himſelf ready for trial, the jury were called, elected, tried, and ſworn——The caſe was opened by

Mr. ATTORNEY GENERAL.——My Lords and Gentlemen of the Jury,—The priſoner, the Rev. William Jackſon, a clergyman of the church of Ireland, and a native of this kingdom, ſtands charged with High Treaſon. He is charged with two ſpecies of that crime. One, that he compaſſed and imagined the death of the King: the other, that he adhered to the King's enemies, namely the perſons exerciſing the powers of government in France, with which nation the King was at war at the time the fact was alleged to have been committed. The Court will inform you, that this indictment is grounded on the ſtatue of Edward III. By that ſtatue, confirming the common law, to imagine, deſign, or compaſs the death of the King, is made high treaſon; the only inſtance where a crime intended, and not committed, is made puniſhable with death, becauſe as there is ſomething ſo eſſential to ſociety in the chief Magiſtrate, (the King) that the compaſſing his death is guarded againſt in this peculiar way, becauſe the peace and ſafety of ſociety depends in a great meaſure upon his ſingle life.

But while the law has thus wiſely guarded againſt violence offered to the chief magiſtrate of the ſtate, it has taken care that thoſe who ſhall be charged with any intention of that kind ſhall not be eaſily or lightly found guilty; and as the intention of the guilty perſon can only be known to himſelf and to the eye of Providence, it is neceſſary, before he can be convicted of that horrid crime, that he ſhould have manifeſted it by ſome overt act, openly done, and fairly proved, which ſhall make that intention plain and clear to the Jury, who are to pronounce their verdict upon him.—Upon this ſpe-

ies

cies of treason, I am to observe what the Court will also inform you of, that to constitute the crime it is not necessary that the party actually had an intention to put the King to death.

[Here Mr. Curran apologized for interrupting Mr. Attorney General with a request, that the witnesses for the Crown might be sent out of Court, which was readily complied with, as well by the Crown Officers as by the Court; and a list of witnesses was desired on both sides, that they might be placed out of hearing of the statement; but nothing more was insisted upon, than that Mr. Cockayne, the principal witness for the prosecution should withdraw.]

Mr. Attorney General proceeded——Gentlemen, I was endeavouring to explain the charge in the first part of the indictment, that of compassing the death of the King.—It is not necessary that the person accused intended to put the King actually to death: but if any thing which might in its consequences produce that effect, he was guilty of the crime charged upon him. Thus, if he meant to dethrone the King, it is settled law that that would be of itself a compassing of his death; for to dethrone a King, immediately leads to the last act of violence. Another familiar instance is, that the party having an intention to imprison the King, altho' it does not appear that he intended to put him to death, yet is guilty by the law of compassing his death; for such an act is the immediate forerunner of the death of a King.—Therefore, Gentlemen, it is for you to consider, when you shall hear the evidence, what the scope and design of the prisoner was.

He stands charged, in the first instance, with an intention of compassing the King's death; to support that charge there are fourteen overt acts laid: if any one of which is proved to your satisfaction, and is in its nature such as discovers to you this traitorous intention, then you will find the prisoner guilty. I shall not take up your time with enumerating the several overt acts that are laid in the indictment; the principal one is, that the prisoner consulted with several others, to induce the governing powers of France to invade this kingdom, for the purpose of dethroning the King: the prisoner meeting, together with others, in such consultation is an overt act, from which you will necessarily collect the preconceived intention of dethroning the King, which in law amounts to a compassing of his death.

Another act is, that the prisoner procured a statement of the kingdom of Ireland to be drawn up, and did put that into the Post-office, to be sent into the kingdom of France, with a view of inducing the rulers of the French to invade this country, for the purpose of dethroning the King.

A further act is, that the prisoner endeavoured to persuade a certain person, named in the indictment, to go to France with intelligence, to persuade the ruling powers to make an invasion, in order to dethrone the King.

Another is, that another person was endeavoured to be persuaded to go into France, to induce the enemy to make such an attempt.

It is also laid, that the prisoner came into this kingdom for the purpose of exciting a rebellion.—That also is an overt act which manifests the intention; and there are various others of a similar nature, particularly specified on the face of the indictment; if any one of which is proved to your satisfaction, then it will appear that the prisoner did incur the guilt of compassing the King's death.

The other species of treason is, that of adhering to the King's enemies; that species of treason is clearly expressed by the very term itself; but an overt act of that kind must also be laid, and therefore fourteen are laid to support that, the same as those which are laid to support the other charge: for, Gentlemen of the Jury, it needs no argument to prove, that if a man invites an enemy, he adheres to that enemy; and if he gives that enemy intelligence, he adheres to him; it is needless to go over the fourteen overt acts to satisfy you of this; for if any one of them be proved, you cannot doubt that the party has manifested a clear, determined adherence to the King's enemies.

Such are the crimes charged against the prisoner at the bar, whether he be guilty of either of these crimes, it is for you to determine upon your oaths. You are on the one hand, to discharge your duty to your King, and to your Country, and you are to take care upon the evidence, that if the party is proved guilty, he shall be found guilty; in order that men may be deterred from committing crimes of the last malignity, tending to the destruction of the State, the peace, happiness, lives and properties of the subject. It is your duty to take care, that by no weak feelings, by no improper leanings to mistaken mercy, a man guilty of such a crime should escape from justice; at the same time you have another duty; and, however you may conceive of the treason, however dreadful the consequences of such a crime be, you are not to be hurried away in consequence of your feelings, lightly to find the accused guilty: These are two observations, not necessary perhaps to such men as you; but in making which I conceive myself merely discharging a common duty.

Having stated the nature of the crimes charged, and the obligations you have to fulfil, the evidence shall now be laid before you, in doing which, it is my business to state the facts plainly and with the utmost simplicity, without giving them any colour that might induce you to lean against the prisoner; and

I will state for your better understanding, particularly, the nature of the evidence. The case is simple and uncomplicated, not arising from a number of indirect facts and doubtful evidence, on the contrary, it is a clear, distinct species of treason, depending upon very simple evidence indeed.

Gentlemen, the prisoner at the bar is, I am instructed to say, a native of this country; he had early in life, I believe, gone to reside in London, but some time since (the exact period I am not informed of) he went from England to reside in France; he was there, if not from the time of the late revolution, yet surely for a considerable time after that revolution took place. In order that you should understand the meaning of some papers to be produced in evidence before you, it is necessary to state the connexion and circumstances of several persons whose names will appear.

Here Mr. Attorney stated what he was instructed would turn out to be the evidence, and remarked thereon — He than concluded thus:——"When you shall put together the several circumstances, compare one paper with the other, and consider the evidence, you can have no doubt of the object; it will be as clear as if the whole design were written in plain terms; it will even carry with it a demonstration stronger than plain terms could do, inasmuch as disguise and artifice is a proof of conscious criminality. It will then be your duty, it is I am sure your inclination, to sift the matter to the very bottom; and either as your consciences and reason shall direct, to protect the peace of your country, by making a necessary example; or else to justify the man, if he shall appear to have been accused without good ground."

EVIDENCE *on behalf of the* CROWN.

Mr. *Cokayne*——This deponent stated, that he resided in Lyon's Inn, London, as an Attorney; that he had known the Rev. Wm. Jackson, who is a native of Ireland, these ten years and upwards; that he went to France upon the Duchess of Kingston's business and resided there two or three years; that he returned in January or February 1794, and lodged at the Buffalo Tavern, Bloomsbury, London. This deponent had constant intercourse with him; but what he was engaged in during his residence in England, or what brought him back from France, he cannot particularly state; that he has done some private business for him in the capacity of his friend and Attorney.—Mr. Jackson left London for Dublin in the latter end of March, and this deponent was induced to accompany him, in order to counteract those schemes which he thought he had "of providing the French with prohibited articles," *i. e.* provisions, &c.—The reason of this deponent for thinking he had such schemes in his mind, was some conversations he had with

with him in England, but cannot mention the purport of any one with precision.—This deponent left his business in England, " to be a spy upon his friend and client, for the ordinary reward he would get for any common business!" remuneration to that amount he expected to obtain; but he did not consider he ever had any promise of reward from Mr. Pitt.—This deponent and Mr. Jackson travelled together, and arrived in Dublin on the 3d of April, and lodged at Hyde's;—he himself applied to Mr. M'Nally on business, and they were shortly after invited to dine with him, and met there Mr. Simon Butler. At dinner there was some common conversation, but at last politics was introduced, when the discourse related to the dissatisfaction of Ireland, " but it was impossible to recollect conversations that passed among three or four people at a time they were all drunk."—

This deponent was present at a conversation at Hyde's Coffee House, the subject of which was, Mr. Lewyn's asking Mr. Jackson for some written documents, which he might produce as authorities to Mr. Rowan, (who was at that time imprisoned in Newgate), so that he might with confidence talk to Mr. Jackson—that Mr. Jackson gave some papers to Mr. Lewyn, and soon after Mr. Jackson and Mr. Rowan had an interview.—After which, this deponent, with Mr. Jackson went to see Mr. Rowan; found Mr. Tone there; the business of the meeting, was about politics, Irish affairs. A great deal was said of the *United Irishmen;* some pamphlets were read; some other matters were talked of, such as the dissatisfaction of part of the kingdom.—This deponent perceived, that a paper was read by Mr. Tone and Mr. Rowan to Mr. Jackson, but not so loud as that he (this deponent) could understand it.

Question by Mr. Attorney General—" What conversations passed at that meeting where Mr. Tone was?—(witness hesitated)—I do not mean to ask particularly as to the conversation of an individual; I wish you to understand me——(witness hesitated) — Answer—" your question is?—The conversation among the three was, forming a plan, and talking of a plan to send somebody to France."——

This deponent further states, that those three persons had a long conversation in a corner of the room, but he could not pick out enough of it to enable him to understand what it was—that he recollects to have heard it proposed at another time, that Mr. Tone should go over to France, to which he at one time seemed to assent, but then receded, and gave his reasons, but what they were this deponent does not now recollect—— [*Here the witness hesitated a good deal, and complained of want of recollection*] — This deponnent said, that his recollection had been much shattered by this transaction; that it hurt his mind more than he could say, to see *that* gentleman in *that* situation.

Chief

CHIEF JUSTICE—" Mr Cokayne, you are a sensible man, why do you not adhere to the distinction between what is your belief, and what is certain?"—This deponent does not recollect, for what purpose or to whom Mr. Tone was to go to France—The prisoner seemed desirous that some one should go to France; he pressed Mr. Tone very much to go, and then proposed that Dr. Reynolds should go, but had much rather Mr. Tone would have undertaken the business—"the substance of the conversation was—he could not recollect—but the substance was, that he was to go France with some paper; he had heard it in general conversation among those three, Mr. Tone, Dr. Reynolds, and Mr. Rowan."

This deponent then proved the hand writing of Mr. Jackson on the letters marked No. 1, 2, 3, 5, 6, and also proved the letter marked No. 7, to Horne Tooke from Stone—and that the letters marked No. 1, 2, 5, and 6 were taken by him to the Post-office, by the direction of Mr. Jackson—but at the time he put them into the Post-office, he knew they could not go to foreign parts, or to the King's enemies, because he had taken measures to have them intercepted, of which Mr. Jackson knew nothing—The deponent further states, that he has had a good deal of anxiety, and more than once thought his person in danger; he hoped it was not so now; " he did understand the country was in a state of disturbance, such as he had not found it to be."

CHIEF JUSTICE—" I thought the danger Mr. Cokanye alluded to, was the danger of being an accomplice; but he puts it upon the state of the country."—

Question by Mr. Curran—" Did you conceive the danger I alluded to, was any offence you might meet with from the public disturbers, and not on account of your own connexion in these criminal facts?"——Answer—" No; I have often considered myself in danger; more so, I think, than the law officers."——

This deponent stated, that he came forward, *reluctantly*, to give evidence against a man with whom he *had lived in intimacy* —that he was examined before at the Castle;—that the testimony given in on his examination there, was not so full as would have been wished;—that when under examination, he " very much hesitated to sign it; and declined it as much as in his power, for he was unhappy at the thought of it; that the Lord Chief Justice said, that he should know he was in their power as to committing him, if he did not swear!"

Chief Justice——" Recollect yourself."—

Question by Mr Curran——" What was said to you touching the power of commiting you?"——Answer—" I hesitated in signing the examinations, which after they were sworn at

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the Privy Council, my Lord Chief Justice was obliging enough to alter very much to the way in which I wished to sign them; —I was pressed very much by the Privy Council—I believe his Lordship's patience was exhausted, and he said "do not you know that you are in my power?"——This deponent also states, that his examinations, although taken at the Castle, were not signed until two or three days afterwards at the House of Lord Clonmell—That he was solely actuated to counteract the schemes of Mr. Jackson and to apply to government, by his having taken the oath of allegiance *three times*—that he first applied to Mr. Pitt, and told him a person of the name of Jackson was coming over to Ireland for such purposes, that he owed him the sum of 300*l.* and that he should think it hard if he lost it—to which Mr. Pitt answered, "that this deponent should be no loser."—

This deponent further states, that he obtained a pardon for treasons committed by himself here, but not for a conviction of Perjury—that he was once "lugged before a Court of Justice," on a charge of perjury, for swearing in an affidavit that he was at a certain place from six until seven o'clock, which was a falshood, but the "Court seeing there could be no advantage to this deponent or his client, acquitted him *honorably*."——

Question by a juror, Mr. Cowan—"Your sole motive was to counteract Mr. Jackson;—how has it happened that you gave so poor an account of many of the transactions, seeing that you came for the purpose of giving evidence for government?"—— Answer—"I gave government as much intelligence as I could; but did not expect to be called on as a witness on a trial."

Mr. Dejancourt deposed, That he held a place in the Post-office; that he found the letters marked No. 2, 5, and 6, in the Post-office on the night of the 24th of April 1794—that he intercepted them in consequence of having received previous orders from Government, to pay attention to letters of that description, and that had handed them over to Mr. Hamilton.

Mr. Carleton deposed, That he had been employed to arrest Mr. Jackson, and did so on the 28th of April:—That he found him a bed in his room at Hyde's Coffee-House; that some papers were on the table, among which were No. 5 and 6, others were found in his trunk and pocket-book;—that the room door was not locked nor bolted; there was but one bed in the room —Mr. Jackson seemed very much surprized, when this deponent took his papers, and was very uneasy about one or two particular ones, but did not point them out——Mr. Attorney General candidly admitted, *that there were one or two papers of a private nature, that might give occasion for such uneasiness in the prisoner.*

Mr. Smith proved the Letter marked No. 4.

Mr.

Mr. Mounsey, from London, proved an office copy of an Indictment, and of an acquittal for the perjury mentioned by Cokayne.—

Here the following letters and written documents before referred to, were produced and read to the jury :—

LETTER, No. I.

Addressed to Mr. BERESFORD, *Basle, Switzerland.*

SIR, *Dublin, 24th April.*

" YOU are requested to see Mr. Madgitt directly, and to inform him that two papers, containing the opinions of two of the first Counsel in the kingdom, relative to the family law-suit, are sent over to him by this post. Mr. Madgitt has been wholly occupied since his arrival, in attending consultations and collecting the necessary materials. Your brother-in-law, with whom your friend Madgitt has been, has obtained the opioions of all good and honest lawyers on the subject; he may, therefore, pursue the recovery of his fortune, by hostile or pacific means, as he and his friends think proper.

" N. B. Your brother-in-law has written to your wife, in order to find out the sex of your child. I am told it is a fine boy, the picture of its father; in every respect sound—except the brain !"

LETTER, No. II.

To Mr. WM. STONE.

Dear Sir,

" YESTERDAY your letter was delivered to me.—I am glad to find the papers have reached the parties for whom they were intended. From the silence of the parties, I was apprehensive the outrider had neglected the delivery. I do not see any thing in the late change of fashions, which alters my opinion of the stability of the new Institution, particularly as the firm of the house is still the same, and the opinions of the principals remain unchanged. In them I never have been able to detect the least inconsistency. The rest have been guilty of tergiversation.

" The state of manufactures in England, which your friend drew up, is very just, so far as it relates to England; but the opinions of the people of England, with respect to the trade of your country are changed, so as to leave no hope of co-operation; yet there are different opinions as to a treaty to be brought about by industry. I am promised a statement of the manufacturing branches here, which shall be sent to you, drawn by a sensible and able manufacturer. I shall obey the directions of your Sister-in-law, by not writing to her, which does not however preclude me from requesting that you will remember me most affectionately to them and Mr. Nicholas; let them know that I am well, and that I am doing every thing in my pow-

power to serve them. It is in agitation to send a person with copies of such covenants and leases as will shew the readiness of his Sister-in-law to come to immediate terms with him. I should advise a junction of interests, rather than a tedious Chancery suit; copy these I send to them. A few days will decide whether the person will go or not. If he should go, he will go from him, and the family here, with full power to treat with Mr. Nicholas, finally settle the terms, thus, put an end to enmity, and bring the parties to accord; one interview is better than a thousand letters. Mr. Nicholas will receive him well, and treat him as he deserves. He has this morning decided, that his private affairs will not permit him to go; I shall therefore send a statement of the family expectations, drawn up by as eminent a pleader, as the gentleman who composed the paper in England.

"I will set out for Cork in a day or two; from which place you shall hear from me, and should you receive any intelligence from any of our friends, communicate it to me, under cover to John Cokayne, Esq. to be left at the Post-office, Cork.

"I wish you would write the first post-day to your Sister-in-law, and tell her to inform Mr. Nicholas that to-morrow I send the two letters from his friends, containing two opinions of the first Counsel, truly digested. As my time has been wholly occupied in collecting them, and they come from the first and most enlightened sources, let your Sister-in-law tell Mr. Nicholas that they contain the whole statement of the case, and to look for them as matters of consequence."

LETTER, No. III.

To Mr. WM. STONE.

Dear Sir, *Dublin 5th April*, 1794.

"OWING to a variety of incidents, which I will explain, when I have the pleasure to see you, I have been prevented from writing till the present moment. Some very kind friends, to whom I owe most particular obligations, being apprised of my arrival, have endeavoured to render me service—and were their power equal to their wishes, I am confident I should experience the benefit of their good intentions: Accepting, as I do, the will for the act, they have a claim on my gratitude.

"I must request you not to make use of any of the addresses I left you, the price and nature of the articles being entirely changed. You will have the goodness to enclose your letter or letters to me, under a cover thus directed—John Cokayne, Esq. Hyde's Coffee-House, Dame-street, Dublin.

"Pray write immediately.—I request, my dear Sir, that you will dedicate a moment by the return of Post, in acknowledging the receipt of this letter; and if you have any letters from the family at Shields which regard their affairs in this country, you cannot too soon enclose them to me, as the assizes at Cork are about to commence.

"In the course of a very few days I will give you some information respecting the bills which you commissoined me to present. I hope your lady enjoys better health, and with sincere wishes for her and your happiness, I request you to believe me your real friend, THO. POPKINS."

LETTER, No. IV.

To Mr. THOMAS POPKINS.

Dear Sir, 11*th April*, 1794.

"I YESTERDAY received your's of the 5th inst.—I am happy you find yourself so agreeably situated where you are. I have received no letter for you; but the day after you left me, I received one to say your first letters were received. I have received another since, in which mine was acknowledged which I wrote the post after Gillet was with us, but no mention was made of any other. I have not made use of what you left with me—what a wonderful change there is in the family!—Will it tend to good?—I confess I think better of it now than before. I want what you possess a knowledge of the several branches of it to form a proper judgment of the conduct in the last fracas.

"Political affairs seem taking a strange turn, if we take into our view the great whole. I cease to wonder at any thing; we seem I think to be the only party resolved to go on with vigour. The King of Prussia publicly avows his disinclination. and I think the French as well as the Emperor shew it by their inaction; but to what can the proscription now going forward in Paris tend, will it purify them and make their conduct less exceptionable and government more fixed and permanent? I really feel a kind of awe in thinking on those subjects, and see every day new matter to astonish me.—We are all tolerably well.

"I remain your's very truly, W. ENOTTS.

"P.S. Since writing the above, I have received a letter in which is, "I have received our friend's letters, and you must tell him, that having given them to the proper people, he must in future address his friend Nicholas and not me; and in the conclusion he particularly requests he may not be written to—I feel particularly happy that the several letters have been received, and I trust that in the peculiar circumstances of the family they will produce proper effects."

No. V. was then read, one of those which was stopped by Dejancourt, directed to Texier, Angely, and Massac, at Amsterdam, on the outer cover—on the inside directed to *Monsieur Daudebuscaille*, *Amsterdam*, marked with a cross, agreeable to the directions left with Stone, within which is in Cokayne's hand-writing, "Remember me to Langnelot and all friends" by Jackson's direction—It had no dates or signatures, and was as follows: The

"THE situation of England and Ireland is fundamentally different in this :—The government of England is national, that of Ireland provincial. The interest of the first is the same with that of the people—of the last directly opposite. The people of Ireland are divided into three sects: the *Established Church*, the *Dissenters*, and the *Catholics*. The first infinitely the smallest portion, have engrossed, besides the whole Church patronage, all the profits and honours of the country exclusively, and a very great share of the landed property. They are of the course Aristocrats, adverse to any change, and decided enemies to the French Revolution. The Dissenters, who are much more numerous, are the most enlightened body of the nation, they are steady Republicans, devoted to Liberty, and through all the stages of the French Revolution, have been enthusiastically attached to it. The Catholics, the great body of the people, are in the lowest degree of ignorance, and are ready for any change, because no change can make them worse.—The whole peasantry of Ireland, the most oppressed and wretched in Europe, may be said to be Catholic. They have within these two years received a certain degree of information, and manifested a proportio ate degree of discontent by various insurrections, &c. The are a bold hardy race, and make excellent soldiers. There is no where a higher spirit of aristocracy than in all the privileged orders, the clergy and gentry of Ireland, down to the very lowest; to countervail which, there appears now a spirit rising in the people which never existed before, but which is spreading most rapidly, as appears by the Defenders as they are called, and other Insurgents. If the people of Ireland be 4,500,000, as it seems probable they are, the Established Church may be reckoned at 450,000, the Dissenters at 900,000, the Catholics at 3,150,000. The prejudices in England are adverse to the French nation under whatever form of government. It seems idle to suppose the present rancour against the French is owing merely to their being Republicans; it has been cherished by the manners of four centuries, and aggravated by conitnual wars. It is morally certain that any invasion of England would unite all ranks in opposition to the invaders. In Ireland, a conquered, oppressed and insulted country, the name of England and her power is universally odious, save with those who have an interest in maintaining it; a body however only formidable from situation and property, but which the first convulsion would level in the dust; on the contrary, the great bulk of the people of Ireland would be ready to throw off the yoke in this country, if they saw any force sufficiently strong to resort to for defence, until arrangements could be made.

"The Dissenters are enemies to the English power from reason and from reflection, the Catholics from a hatred of the

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English name; in a word, the prejudices of one country are directly adverse, of the other directly favourable to an invasion. The government of Ireland is only to be looked upon as a government of force, the moment a superior force appears, it would tumble at once, as being founded neither in the interests, nor in the affections of the people. It may be said, the people of Ireland shew no political exertion. In the first place, public spirit is completely depressed by the many recent persecutions. The convention act, the gunpowder bill, &c. &c.—Declarations of government, parliamentary unanimity, or declarations of grand-juries, all proceeding from aristocrates, whose interest is adverse to that of the people, and who think such conduct necessary for their security, are no obstacles; the weight of such men falls in the general welfare, and their own tenantry and dependants would desert and turn against them; the people have no way of expressing their discontent *civiliter*, which is at the same time greatly aggravated by those measures, and they are on the other hand in that semi-barbarous state which is of all others, the best adapted for making war. The spirit of Ireland cannot be calculated from news-paper publications, county meetings, &c. at which the gentry only meet and speak for themselves.—They are so situated that they have but one way left to make their sentiments known, and that is by war.—The Church establishments and tythes are very severe grievances, and have been the cause of numberless local insurrections; in a word, from reason, reflection, interest, prejudice, the spirit of change, the misery of the great bulk of the nation, and above all, the hatred of the English name, resulting from the tyranny of near seven centuries, there seems little doubt but an invasion in sufficient force, would be supported by the people.—There is scarce any army in the country, and the militia, the bulk of whom are Catholics, would to a moral certainty refuse to act, if they saw such a force as they could look to for support." *

LET.

* The reader may consider this letter as containing a tolerably correct description of Ireland (setting aside the motives of the writer) both as to the number and disposition of the parties. Not many years ago, Mr. Bush, the Commissioner, estimated, from the hearth-money books, the inhabitants of Ireland at some thousands above 4,000,000.—One material alteration, however, has lately taken place, namely, the opinions of the French Revolution "in all its stages"—The Dissenters of Ireland (who form the most industrious and the most enlightened portion of the community) do NOT approve of the French Revolution "in all its stages."—Like a great majority of the people of the three kingdoms, they applauded the first dawnings of that *Reformation*; but the atrocious acts of the French mob, and the crimes of their rapacious, unprincipled leaders, disgusted all good men——The French, instead of accelerating the cause of rational Liberty, have retarded its progress in Europe, perhaps for ages——"*O Liberty*, (exclaimed that illustrious female victim of Jacobin fury, M. Roland) *O Liberty, what horrible crimes are committed in thy name!*"

LETTER, No. VI. *relative to the State of England.*

"EXCLUSIVE of positive information of the temper of this country, it may be known by people at a distance by the following signs:

"There are no petitions against the war—There are courtly verdicts given by Juries, with few exceptions—There are no mobs, though much distress — There is much readiness to enlist soldiers—There is much quietness on being impressed on the part of seamen—The votes of parliament are almost unanimous, though the parliament has run half its length, and the members of the House of Commons look to re-election. The stability of Lord Chatham continues, in default of all his neglects—Terror pervades the friends of Liberty, who would soon shew a different appearance, if they were countenanced by the majority of the people—The temper of England is in favour of the first French Revolution, but not of the second; however, on the whole it shews symptoms of being adverse to the present situation of the war, not from disliking its principle, but from seeing very little profit in it; at the same time though they think its main object unattainable, namely the overthrow of the present French system—They would be more earnest for peace, had they either suffered enough, or did they think the present French Government sincerely disposed to peace. There are many people sincerely attached to the principles of the French Revolution in England, if they are counted numerically; but they are as nothing compared to the great mass of the people who are indisposed to them—In Scotland the proportion of Democrates is increasing, but they are as yet a small minority.—Ireland will follow the Democracy of Scotland—Each of these countries wants time only to convince itself in its own way, but it will not be convinced by a French invasion. If France were to invade England, every man would turn out from good-will or from fear, and the few that are discontented would be quelled with ease, as the French citizens were by La Fayette in Champ de Mars, or the disaffected lately by the Commissioners in Alsace. There could be but one line of conduct for the English to pursue, should the country be invaded—they must defend it.—War being but the means of attaining peace, and the well meaning among the subjects of the Confederates being told the French are adverse to peace, or ask such preliminaries that it is in vain to treat with them: It would be highly useful if France, declared after any new success which she may hereafter obtain, her aversion to conquest—her disposition to peace—her desire that other nations should govern themselves, her determination of changing this system, if the war against her is continued. And it would be useful also, if every convenient opportunity were taken, of declaring that her present government is Revolutionary, and

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that the Constitution of June last would be acted upon at the peace.—And also if she declared her regret at the necessity of using harsh measures, and now and then employed philanthropic language, which has an astonishing effect in pacifying the English, and indeed pacifying Europe. It would tend much to conciliate the minds of the English, were the Convention to decree the liberation of all the Englishmen now in a state of arrest unaccused of crimes, and restoring to them their property: at the same time allowing them to leave the country within a certain space of time. It would tend also much to create an aversion to the war, were the Convention to decree the terms on which they would make peace. This conduct would be magnanimous, and if they did not hold out terms extravagant, the people of this country would not hesitate to speak their aversion to a continuance of the war.—It would be very adviseable to have copies of the more important decrees of reports lodged at *Havre*, to be transmitted by neutral vessels for translation."

LETTER, No. VII.

"*To* JOHN HORNE TOOKE, *London*."

Paris, 25 *Nivose*.—*Second Year of the Republic, one and indivisible.*

"*My Learned Friend*,

"THE circumstances of the two countries, have hitherto prevented me from giving or receiving any information respecting you, for as there have been few or no other means of corresponding than the post, I have had the traitorous correspondence bill too much before my eyes to hazard your tranquility, though I had nothing to fear for my own. This however will be delivered to you by a gentleman—a Citizen, I should have said, to whom you have been heretofore known, and I introduce him as one who will be able to give you the most accurate information of what is doing, and has been done here; and recommend him also as the person to whom you may confide your own sentiments respecting the state of affairs in this country or your own——As I know that your prudence keeps some pace with your patriotism, you may be satisfied, that I am sure of the principles of the man I thus confidentially introduce to you, and thus much you may repose on me. As to the rest, I leave you to arrange it, wishing myself a third in the party.——And now my patriotic friend, let me offer you my warmest and most heartful congratulations on the immense prospect of public happiness which is opening before us. You are amongst the small number of those, who in the worst of times never despaired of the cause of Liberty, and you are the only one, who when the name was but a barbarism amongst us, taught the great principles of sacred Equality, which we have

so completely reduced to practice. I look forward with transport and joy, to the moment when the doctrines which you have preached shall receive their due accomplishment; when the various parties of Ministerialists and Oppositionists, Dissenters and Churchmen, Nobles, Priests, and Kings, shall sink into one undistinguished mass of ruins, and nothing shall be seen or acknowledged, but the People—the sacred voice of the People!

"The little commission which you gave me to the milliner, I have properly executed; it was to have been sent to the ladies the last spring, but the untowardness of the events at that time, hindered the completion of it; and I could not find any one to whom I could properly intrust it, the fashion being a little changed; if nothing unforeseen happens to hinder it, you may hope to have it over in two months at farthest, and under happier auspices than the last spring; since the fashion is so much improved, and I have taken all the precautions, and even more than you entrusted me with at Tuffans; but the sending it, as you may suppose, will depend on circumstances.

"I leave to the friend I introduce to you the relation of the history of this country for the last twelve months. You will have fallen into a thousand errors on the subject of our politics, as I, though on the spot, have done; but I think I now see land.——God bless you, we shall meet under happier circumstances than our last, and drink a cool bottle of good Burgundy, under the shade of our trees, an early day in the next summer, if you can spare so much time from your legislative or ministerial avocations.

"HEALTH AND FRATERNITY."

J. H. STONE.

Here the Evidence on the part of the Crown closed.

Mr. CURRAN.——*My Lords and Gentlemen of the Jury,*—I am sure that the attention of the Court must be a good deal fatigued, and I am sure, gentlemen of the jury, that your minds must be of necessity fatigued.—Whether Counsel are fatigued or not, is a matter of very little worth.

I am glad that it is not necessary for me to add a great deal to the labour either of the court or of the jury. Of the Court I must have some knowledge, of the jury I certainly am not ignorant. I know it is as unnecessary for me to say much (perhaps any thing) to inform the Court, as it would be ridiculous, should I affect to lecture a jury of the description that I now address.

I know I am addressing a Court anxious to expound with fairness and impartiality, the law of the country without any regard to the consequences in point of fact, or to the end and policy of any individual prosecution. In the jury I am looking to, I know

know that I addressing twelve respectable and sensible men of my country, who are as conscious as I can be of the great obligation to which they have pledged themselves: namely, to decide fairly between the King and the person accused, without listening to passion, being swayed by prejudice, or suffering their thoughts to be occupied by any consideration, except the weightiness of the charge, and the evidence sworn in support of it. I am speaking to a jury who know as well as I do, that the great object of their duty is to protect the individual who is committed with the Crown, against all accusation which is not founded in truth. They will remember, I know they will remember, that the great object of their duty is "to come," according to the words of a late venerated judge of another country, "with minds like white paper, upon which prejudice, passion, or calumny, hope, interest, or fear have made no stain or blot;" and that they have come into the box, standing indifferent, as they stood before unsworn.

Gentlemen—In the little, and it shall not be much, that I shall take the liberty of saying to you, I shall not push any argument beyond its intrinsic weight. If I have a bad case, I shall not endeavour to deck it out in colours, or disguise it by concealment. My objections shall be addressed to your reason. I shall not pretend to you, that they are of the most glaring and unanswerable nature. But that weight they have, I only ask of you to give them. If they have not some weight in themselves, it is not a great promise from me that could give them any anticipated sufficiency.

You are impannelled to try a charge. The first question then is—What is that charge? The prisoner is indicted upon two several branches of that statute which inflicts the pains and penalties of High Treason upon two offences which is particularly described. By that statute, if any man should compass or imagine the King's death, he is guilty of the crime. The nature of the offence, if it required any comment upon it, has been learnedly, and candidly, and justly commented upon by Mr. Attorney General in his statement of the case.

The second part of the charge is—That he did adhere to the King's enemies. By the law of this country, there are rules peculiarly applicable to cases of high treason, contra-distinguished from all other branches of the criminal law. The nature of the offence called for this peculiarity. There is no species of charge to which the innocent man may be with more probability made the object, perhaps the victim of accusation, than offences against the State. There is a natural and laudable leaning attached to the honest feelings of every man who respects that law which secures the property and person of himself and his countrymen, which feeling is wont to warn and alarm the passions, at times perhaps too strongly, against the

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man suspected of an infringement upon that security. It was therefore to guard the subject against the most dangerous abuse, the abuse of a virtue, that this act of parliament was made so favourable to the subject, inasmuch as it defines strictly and with precision, the offence for which, and by which alone he shall suffer death.

Gentlemen—There is no charge which the baseness of the venal informer can with more hopes of success affix upon this or t'other man, than that he is an enemy to the public peace. There is no case where malice can have any better hope of finding gratification, or greater expectation of reward, or fuller compensation for its turpitude, than by pursuing such an accusation as the present. It was thought necessary for these reasons, to prevent the accused from being made a sacrifice to the indignant feelings of a jury, or the prompt and keen audacity of the hireling informer. How has the legislature done this?—By pointing out in unequivocating terms, those rules which shall be restrictive on a court and on a jury. The man must be pronounced a traitor if he commits the crime, but it must be a crime of which he shall be fairly and publicly convicted; an overt act such as the law has designated to be treason, and by such evidence as the law has made sufficient to substantiate that overt act. And in order to give an opportunity for such a defence, the leading facts or classes of treason of which he has been accused, shall be stated of record, in the very body of the indictment. Therefore, justly did I hear it observed, that there could never be devised by human wisdom, a mode of trial more fair, more merciful than this.

I have stated to you the foundation of the law, as it stands in this country, touching the mode of accusation and trial. I have to add, that in Great Britain it has been found right still further to add to those sanctions, alike created to protect the consciences of the jury, and the safety of the prisoner, by an express statute, enacted in the reign of William III. and it is now settled in that country, that no man shall be indicted or convicted for high treason, unless upon the evidence of *two* competent witnesses; and the statute describes what sort of evidence that shall be:—either two witnesses, swearing directly to the same overt act, or else one to one act and one to another; but in this latter case, the two several facts must not be distinct in their nature, but must be of the very same species of treason. So that to every separate class of treason of which a man is accused, there must be at least two credible witnesses produced, otherwise the man cannot, by the law, and consequently ought not by the jury, to be convicted.—In England no man can at this day be found guilty, except upon the concurring testimony of *two* witnesses, credible in their persons, and concurrent in supporting the allegation of one integral and substantive class of treason.

I state it to you, Gentlemen, that is now the settled law of the neighbouring kingdom: — and I state it to you emphatically to be the settled law of that country; because, far am I from thinking that we have not the blessings in this country of living under the same protecting sanction of the law; far am I from imagining that the breath which in England cannot so much as taint the character of the accused, shall, because he is in Ireland, blow him from the earth. That he who in GreatBritain would laugh at his accusers, must, because he is to be tried in *this* country, perish under their accusation. And sure I am, that in a country where we have had few if any instances of prosecutions for this species of crime to be adduced as authorities against the accused, the justice of the Court, not merely its humanity, will give the fullest effect to any argument which tends to shew, that the law which takes away the life of man, and which should ever be wise and therefore uniform, is in England and Ireland one and the same.

CHIEF JUSTICE.——You mean to argue then that the statute of William III. is in force in this kingdom?

Answer.—I mean to argue, my Lord, that the necessity of *two* witnesses in any case of treason, is as strong in Ireland as it can be in Great Britain. It is the opinion of my Lord Coke, founded upon a number of authorities. It is an opinion of Lord Coke, referring to judicial confirmations of established weight, which I conceive not at all shaken by an *obiter* assertion of Justice Foster, nor by any thing to be found in the works of Sir John Hawkins, or any other crown-lawyer. It is laid down by Lord Coke, that by the common law of England *two* witnesses were necessary *. One witness was not sufficient to convict any person of high treason, for where there is but one witness, says he, it shall be tried by the constable and marshal, not at common law.

I consider the statute of Edward VI. as well as that of King WilliamIII. to have become necessary, from the abuse that had arisen in the exercise and practice of the common law. After the statute of Edward VI. which did declare the necessity of two witnesses, had fallen into disuse, by a gradual departure of the Judges from that statute, and before the enaction of that of William, so far had a constructive departure taken place, that the statute was said to have been complied with by one witness, as to the fact, and another swearing as to hear-say; it became necessary, not by a new-fangled law, but by a declaration of the great principle of justice, and the common law, to re-enact the principle, and put an end to the abuse of the common law; by saying, that no man could be lawfully indicted or convicted without two witnesses, as I have stated. And there seems to be a sound distinction between this and every other crime, for

* See 3d Inst. 96.—Mr. Grattan moved to obtain this law for his country—but the British Minister said, "it was not fit for Ireland!" !!!

it is the only crime that any subject is specifically sworn not to commit; it is the only offence that a subject takes an oath to abstain from; every other offence is left to be controuled in the first instance, either by the conscience or feelings of a man; but he is sworn not to swerve from his allegiance to the King. So that in this it exactly resembles the case of perjury, where no man is convicted by a single witness; and why? Because it would be but setting oath against oath; whereas, until the credit of a party is impeached, the oath of one man is of as much avail as that of another. So in case of a man indicted for high treason, there is on one hand an oath of allegiance of the party, on the other there is a criminating oath of the accuser; so that I believe Lord Coke was well warranted in saying, that this was a rule deduced from general justice, and even from the law of God himself.

Hitherto, gentlemen, I have been (as far as respects this point) stating the matter of law, which I have offered to the Court. But the next question is for your consideration solely. Namely, the credit which the witnesses deserve. See then what these witnesses have been. In all cases of every description, the witnesses should be unexceptionable in their credit; and the law respecting every species of criminal charge is, that no man shall be found guilty of any offence, but by the testimony of *one credible* witness.

Gentlemen of the Jury, I have submitted my humble idea of the law, and the charge which Mr. Jackson has been called to answer. The overt acts necessary to be proved are these:

1st, "That he did traitorously come to and land in Ireland, for the purpose of procuring and attaining information, and accounts of and concerning the situation and dispositions of the subjects of our said Lord the King, in his kingdom of Ireland, and of sending and causing to be sent, such information and accounts to persons exercising the powers of government in France.

Here Mr. Curran proceeded to read the 2d, 3d, 4th and 5th overt acts, (for which see indictment.)

Gentlemen, I have stated five overt acts. You will be pleased to recollect the evidence given by Cokayne, in which he did not presume or pretend to say, that Jackson came to the kingdom of Ireland for any such purposes, as are stated in the indictment. As to the four naked acts, I have only one observation to press upon you, which is, to beseech you not to confound with the evidence that statement which it was necessary for the learned Counsel to make, in pursuance of the instructions he had received.—Mr. Cokayne met Mr. M'Nally—he had known him in England—Mr. Jackson, the Clergyman, had known him also. He had some private professional business with him. Mr. M'Nally entertains him—he met several persons—they talked of politics—they talked of Ireland

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—he did not pretend to give any account of any specific subject of conversation—not one tittle of any act of conspiracy, such as is charged to him. He went to Newgate—Mr. Rowan was in confinement there—he sometimes met Jackson; sometimes Mr Tone. And what passed there? was it to excite any person to make a descent upon this country? Let me remind you, Gentlemen, that it is not what a learned Counsel may have been instructed to state, but what a witness may have sworn, that is to be the ground of your decision. And what has this witness sworn? He did not hear the conversation!—He heard part of it!—Gentlemen, will you make any man answerable with his life for a part of a conversation of which the witness tells you he could hear but a scrap, without adverting to the qualification which might be afforded by that part which he says he did not hear? I mean you should take it as he has stated it, high as he was wrought up, and forced on, by the examination. He heard a talk of somebody going to France, to carry some paper to Paris—he knew not what!—He talked of a paper of instructions to the French; but what instructions he knew not!——it might be to the manufacturers, it might be to the royalists, or to any other men in France; it might be to the friends of the King of Great Britain. Not that I mean to say, there is not something suspicious that might excite some doubts or alarms, in having three of four men meeting in Newgate, huddling themselves together in a corner, and talking of going to a country with which we were then at war. Do I mean that there is nothing suspicious in this? No: I am not reasoning so at all. But I am reasoning thus, and I think soundly too: That it is not for you to say, by your verdict, whether an act is or is not suspicious, or may or may not be explained into any crime. Let me remind you, that your verdict is not to establish guilt because it is possible, or more than possible; but that the man is accused, and must be acquitted, unless upon a certainty, and not vague conjectures, you are forced by the strength of evidence to pronounce, that he has merited his death.

I feel that your verdict will be founded upon nothing less than that resistless testimony, and upon those unalienable principles of law and justice, on which it should be founded.

But what was the fact attempted to be proved? It was to go to France to carry a paper. I know that this of itself is a crime. To go into France to do any legal act, (and no other this witness has proved) is a crime, subjecting the party to six months imprisonment, or something not exceeding that. But this is the first time I ever heard it contended for, that the encouragement of a person to go there for any purpose of that kind, was a crime, much more high treason. For what purpose he was to go, the witness has not sworn. Yet you are to say upon

your

your oaths, that it was to invite the enemy by force to effect the subversion of this government. Has the prosecutor sworn any thing like that?—I think not.

The next overt act charged is:—"That he did compose and write a letter to Mr. William Stone, of London; and in that, did direct and instruct the said William Stone, to reveal and disclose to the said persons exercising the powers of government in France, and to the people in France, enemies of the King, a scheme of the said William Jackson, and other traitors," &c.

Gentlemen of the Jury, you have heard these letters read; you must of necessity look upon them in one or two important and distinct points of view. The first question to be asked is,—What are those letters? If all the other charges were true, do they sustain the allegation laid? Are the letters requiring Stone to inform the Convention of such a state of this country? Are they such as would invite them to form the plan of an invasion of this country? I know not in what state the property, much more the life of any man can be, if they are always to be at the mercy, and depend upon the possibility, of the accusers's explaining into guilt, the real or pretended circumstances under which he has happened to hold a correspondence at home or abroad. The letters are written apparently upon mercantile subjects. The writer talks of manufactures, of a family law-suit; of the price of articles being changed; and in another letter of differences between families; of overtures to agreement, and disputes to be explained, by some common moderator?

What is the evidence upon which you can he warranted in saying, "manufacturers means treason?—Mr. Nicholas means France?—Your sister-in-law thekingdom of Ireland?" and such like strained and affected inferences. "Danton has been guillotined, but, however, that makes no difference at all in the firm of the house." The "change of fashions, of manufactures, and prices," stand for every thing else that may be necessary; and thus the treason is made out, and waits for nothing but your verdict to ratify and confirm it.

Gentlemen of the Jury, give me leave to say, that the most cruel and barbarous consequence would follow from letting in such evidence; that the idlest correspondence might be strained to any construction; and for that which men had written in the moment of harmless gaiety, they might be obliged to pay the dreadful forfeit of their lives.

But I say, the simplicity and excellence of our law is this:—That a man's guilt shall be proved, and not supposed; and it must not be such proof as is to be elicited by a judge, and depending upon nothing but the recollection or fantastical discretion of the witness, or the credulity of the Jury who are to try the cause.

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This letter appears upon the face of it to be a letter of business, concerning family differences. It was only necessary that the parties should be understood to each other. But be that as it may, it would be better, surely, and more consonant to the mild spirit of our laws, to let twenty escape, who may even have had a criminal purpose in writing letters of this kind, than run the risque of the hard precedent which you would establish, if without any evidence you should make the life and character of men fall victims to evidence of this kind, unsupported by any thing that ought to give rational conviction to an intelligent mind.

I do not think it necessary to state minutely the rest of these allegations. The next overt act charged is, a conspiracy and traitorous confederation. I shall now consider, Gentlemen, the evidence by which that charge is supported, which will be the shortest and clearest way of calling your attention.—It is supported either by the positive swearing of Cokayne, as to these facts, or by the written evidence, which also turns upon the swearing of Cokayne.

Touching actual conspiracy, he does not venture to swear that he ever heard any conversation that bore any distinct meaning of that sort.—Somebody was to go to France; he did not know for what. He had ideas in his mind, but never from any direct communication. There have been other letters read in evidence, said to have contained duplicates of a sort of representation of the state or supposed state of Ireland. Cokayne says, that he got the packet from Jackson; that he wrote the directions. One of them was, I think, directed to some person in Hambugh; another to some person resident in Amsterdam; these papers were read; they contained assertions, whether true or false, I do not think material—I think the materiality is in their falsehood.—I think the statements in that paper are utterly false. I believe it is known to every man in Ireland, that this country is not in a state that could induce any expectations, or hold out any hopes to the most adventurous and wicked folly, to try the experiment of a descent upon it.

Gentlemen of the Jury, there is a more material thing for your consideration: A paper is stated by the indictment to have been sent for the purpose of exciting and persuading the persons exercising the powers of government in France to try the fate of a descent in Ireland, hold out encouragement and draw such a picture of this country as to induce them to make so foolish a trial. Have you evidence to support that charge? You have heard that paper read—suppose it is Mr. Jackson's opinion which he was writing to his correspondent. It may be a foolish opinion, but that is nothing extraordinary.

Have you ever heard six men to speak upon such subjects, and all to agree: can you conceive it an unnatural thing for a

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man to form an absurd opinion—a man unacquainted with the affairs of Ireland, to suppose that twelve men might make a successful descent? Mr. Jackson was abroad; he was a traveller; he was a literary man, in the habits of corresponding. Is it likely that a letter written by him to a man living in a country in actual hostility with France, and in the closest alliance with this country—did it follow that a letter must have been written with a view to invite the government of a distant country, to make a descent on that in which he was?

But, Gentlemen, let me be understood:—It is not as a thing impossible that I am arguing this—No; but because a man's guilt or innocence may be truly or falsely alledged in evidence; it is a letter that the most innocent man might write, or that the most guilty man might write; but if it stands in evil scales, merely;—nay more, if the scale of guilt does not greatly preponderate, so as to leave no doubt whatever, he is entitled to your verdict of acquittal. Two letters have been also read, and although it was not expressly said, yet, I own, gentlemen of the Jury, I could not persuade myself that there is not a little too much emphasis laid upon names which I have read in news-papers, but to which I am otherways a stranger. I have read in news-papers of the name of Laingnelot in the debates of the Convention:—I have read that Mr. Horne Tooke was tried in another country, and acquitted—I have heard of another person of the name of Stone being in confinement in England—and of another person mentioned being in Italy. You are to draw no conclusions from such circumstances. There may be fifty persons of such names.——It is the guilt of the man, and not the sound of names, by which his fate is to be governed.

What writings have been read?—One paper containing, or seeming to contain the forms of addresses—one from Mr. Stone, one to a Mr. Beresford, &c.

Gentlemen, I have stated the material part of the evidence. I have endeavoured to submit my poor ideas of the rules of evidence by which you ought to be guided, and the rules of law as it humbly strikes me, which ought to govern you in the discharge of the great duty you are now performing. I see now only one remaining topic on which to trouble you.

It appears to me of the utmost importance, that you should consider who is the man that has been examined to support this charge? *One single witness!*—Have that engraven upon your minds: The chain, in all its parts, can hang only on the evidence of Mr. Cokayne.---There is no other witness of any conversation.---There is not a material letter that has been read in this cause, that does not stand upon the evidence of Mr. Cokayne; and, that I am warranted in this assertion, you will see to demonstration, when I remind the Court, that Cokayne is

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the only evidence that has been called, as I recollect, to prove the hand-writing of Jackson, the prisoner. He is the only witness that has been called, to prove any circumstance, by which these letters in a criminal view, can affect the person of the prisoner. He was the only man upon whose evidence must rest, either the fact of their being written by Jackson, on the inuendoes imputed to them, for the purpose for which you, the Jury, are to believe that they were sent.

Gentlemen of the Jury, I am scarcely justified in having trespassed so long. It is a narrow case;—it is the case of a man charged with the most penal offence, and by whom?—By ONE witness: *and who is he?* A man stating to you that he comes from another country, provided with a pardon for treasons committed, not in Great-Britain, but in this kingdom, here, of Ireland.—Have you ever been upon a Jury before? did you ever hear of a man's sacrificing his life to the law of the country, upon the testimony of a single witness; and that single witness, by his own confession, an accomplice in the crime? Why is character made the subject of enquiry?—Take his own vile evidence for his character: He was the traitor to his client---what think you of his character?—He was the spy that hovered round his friend, snuffed his blood, and coveted the price that was to be given for shedding it!—He was the man who yielded to the tye of three oaths of allegiance, to watch, and be the setter of his client!—to earn the bribe of government—secure, with his pardon already in his pocket!— He was to put letters in the Post-Office,—to do what he stated himself pressed upon his mind, the conviction that he was liable to the penalties of treason; and this very act did he do, from the obligation of three oaths of allegiance!—Was he aware of his crime? His pardon tells it—Was he aware of the turpitude of his character? — Yes — he brought a witness to support it, knowing that it was a bad character, he comes provided with the antidote!—And he does not himself deny, that although a jury did not think that his act deserved to be punished as a flagrant perjury, yet he had gone the *moderate length*, to swear the thing that was not true! This, Gentlemen, was one step at least, towards that profligacy he has since attained. Is it a man of that kind—his pardon in his pocket, his bribe not yet within his pocket, until you, by your verdict, shall say he is worthy of it—Is it such a man, whose evidence should take away his fellow-creature's life? See how he was to be taken care of:—Jackson owed him a sum: he states this to Mr. Pitt, who tells him, he shall be no loser. He came over to be a spy—to be a traitor, to get a pardon, and to get a reward; although, if you believe him, it was to be all common acre-able work, to be paid for, like all his other ordinary business, by the day, or by the sheet. He was to be paid so much a day for ensnaring and murdering his client and his friend.—Do you think the man deserving of credit who can do such

such things? No, Gentlemen of the Jury, I have stated the circumstances by which, in my opinion, the credit of Mr. Cokayne should be reduced to nothing in your eyes. But I do not rest there. Papers (and the gentlemen who conducted this business seemed to lay great stress upon it,) were found in the chamber of the prisoner:—the door was open, and, by the by, that carelessness was not an evidence of any conscious guilt.

The papers were seized.—That there were some belonging to Jackson there is very clear, because he himself expressed some anxiety about papers, which, it has since been candidly confessed by Mr. Attorney General, had nothing to do with this day's business. But I return to the credit of Cokayne: I asked him if he had put any papers himself in Jackson's room the night before the arrest?—I asked him whether he had stated to any person that he had?—He answered, No.

Gentlemen of the Jury, the only witness I will call, shall be to shew that in that Cokayne swore false; and here, Gentlemen, let me make one observation to you, the strength and good sense of which has occasioned it to be ten thousand times repeated, and which you may have on a higher authority than mine. Where a witness swears glibly thro' a number of circumstances, where it is impossible to contradict, or to impeach him; if he has with the same confidence asserted any thing wherein it turns out possible, and in which he is contradicted, it ought to damn the whole case that he has sworn to without the danger of detection. He swore to a conversation of Jackson—to what he said—to what he did. He well knew that Jackson never could be a witness to prove the contrary, unless the good sense of this Jury shall enable him to prosecute the perjurer in his turn. But where he speaks to a circumstance, where it is possible to apply proof, it shall be found that there he has forsworn himself. It would be horrible to suppose that the minds of any Jury could be carried away, by giving credit to the testimony of this man. If he has perjured himself in one point, 'tis the key-stone of the arch; and if you can pluck it from out the fabrick of his testimony, it falls in ruins on his head

Gentlemen, I will lay that evidence before you.—But ere I sit down, permit me to remind you, that if every word that Cokayne swore, was sworn in Westminster-Hall against the prisoner at the bar, the Judges would have said, in point of law, there is nothing for a Jury to decide upon. *The evidence stood upon Cokayne only—there was no second witness:*— The letter stood upon his testimony only.—And here your Lordship will please to recollect, that no answer can be drawn from the evidence of Dejancourt to satisfy the requisites of the statutes of treason; for it was not evidence, either to the same overt act,

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as affecting Jackson personally, nor of any distinct overt act; it was merely that kind of evidence, in the abuse of which arose the reason and necessity of the statute. It was about mere concomitant circumstances. The overt act was the writing and putting in the office. That was sworn to by Cockayne, and if Cokayne deserved credit, it would have gone to the establishment of the fact; but it was no proof of any overt act against Jackson. The notion of the statute is—that the overt act shall be so proved, that either, singly, should be sufficient to establish the point, where in any other case but in treason, both shall be required. The evidence of Cokayne, clearly, would have done that, because it went to say that Jackson had actually given him the letters, and that he had put them in the office. But if that of Dejancourt had stood singly, it could have brought nothing home at all;—the hand-writing itself was Cokayne's;—he swore the superscription was his—that he put it in the office. The hand-writing of the inclosure there is no evidence of—What did Dejancourt say? That he found in the office a letter, which he produced, and which Cokayne said was the letter he put into it. This observation appears to me to gain some additional strength from this question: Why did not the prosecutors examine Mr. Tone? It is said they could not pardon him.—My Lords, they could. It was as easy if he was guilty, to pardon him, as to pardon Cokayne. Perhaps it may be said, the argument turns the other way, and affects the prisoner; because, if he had called Mr. Tone, Mr. Tone would have given evidence for him, without a pardon, even tho' he was guilty. With great respect, I think not: Nor is it to be imputed to the prisoner that he has not armed himself with witnesses. It is publicly known to every man in Court, that he has lain in a prison near twelve months, and has been confined in a goal from the moment of his arrest. He was not able to procure the attendance of witnesses; a stranger in the land, he could not have known whether some of the persons talked of had ever been in existence.

Gentlemen of the Jury, let me not trespass further: — Let me remind you, that in a criminal case, doubts should be acquittal. Let me remind you, that you are trying a cause upon evidence, which, at the other side the water, would preclude the Jury from a verdict of condemnation. It is for you to put it out of the power of mankind to say, that the evidence which must pass harmlessly over the head of a man in England, should sink him in Ireland:—and that a verdict to establish the most penal consequence, shall be so much more easily obtained in Ireland, than in Great-Britain.

Mr.

Mr. Humphries, a witneſs on behalf of the traverſer, was called, but he not appearing——

Mr. Ponſonby addreſſed the Jury on behalf of the priſoner, but as his ſpeech was no more, in ſubſtance, than what had been delivered by Mr Curran, we think it needleſs to inſert it.

The Lord Chief Juſtice now aſked the priſoner, if he had any thing to ſay for himſelf? which, after ſome conſideration, he declined

Mr. Prime Sergeant then addreſſed the jury in reply recapitulating the evidence, and ſhewing the application of it to the ſeveral overt acts laid, and to the different counts in the indictment. He divided his argument into two branches of enquiry: Firſt, were the facts charged, proved to have been done by the priſoner? — Secondly, if ſo, do they amount to the crime charged?—And upon each of theſe topics he obſerved at great length, going through the whole of the indictment and the evidence, and making ſuitable comments as they aroſe from the ſubject matter. He particularly adverted to that part of the teſtimony of Cokayne, which ſeemed to hint, that the ſigning his examinations was owing to an intimidation from power:— which he anſwered, by ſhewing that it was three days after the threat of a committal, that he ſwore his examinations. During the courſe of his reply, he often requeſted the prisoner and the counſel concerned for him to ſet him right if he had miſtated any thing; for that he never on any occcaſion had ſtood forward with more anxiety, to diſcharge his duty to the public, or had more painful feelings on his mind.

Mr. Prime Sergeant was interrupted by Mr. Curran, that he might introduce a witneſs to impeach the credibility of Cokayne—To which the Court after ſome little heſitation aſſented.—

John Watſon being ſworn, depoſed, That he had known Cokayne, and heard of his general character while in London, that he had been cautioned againſt him, and would have nothing to do with him in his private capacity—He was a compounder of *qui tam* actions and informations——

Mr. Prime Sergeant then proceeded in his reply, and recapitulated, and made many obſervations on the teſtimony, which we conceive it wholly unneceſſary to inſert.

After Mr. Prime Sergeant had ſat down, the Priſoner made ſome obſervations, as to the variance in the name of Mr. Benjamin Beresford, and alſo touching the conſtructive and implicative ſort of evidence. Being aſked, if he would conſent to the various papers which had been read going to the Jury, he expreſſed his deſire that they ſhould, and they were accordingly ſent up.

The Lord Chief Juſtice *next addreſſed the* Jury.

Gentlemen of the Jury,—In this caſe of the King againſt William Jackſon, Clerk, the indictment is for High Treaſon, un-

under the 25th Edw. III. ch.II. which act is considered as the first protection to the subject that ever was passed; for it defines and precisely ascertains, what shall and what shall not be called high treason, to affect the subject's life.

The two branches of the statute upon which the indictment is grounded, are:—first the compassing the death of the King—and secondly, adhering to his enemies. And before I go further, I shall mention one important principle or two, which never have been doubted.

I. That a conspiracy to levy war against the King or his Government, is evidence of compassing his death. That is laid down in all the late Crown writers, and upon a review of the subject, in 4 Black 82. also in 3 Inst. 9. and Foster 212 and 213. The reason justifies the practice, and the principle;—for the probable, if not the necessary result of levying war against the King's Government, is the destruction of the King, or his imprisonment, which leads to it.

II. Giving the enemy intelligence, is evidence of the second branch of this indictment: namely, the adhering to the enemies of the King.

It has been fortunate for this country, although it encreases the difficulty of the Judges at this day, that there is scarcely an instance in the recollection of the oldest lawyer in it, of this crime having been committed, and a prosecution for it.—— Each part of this indictment charges a clear and simple treason, not constructive nor any way involved. It is laid two ways, either as a compassing the King's death, or adhering to his enemies; a case has been cited from the King's Bench, in England, of the King against Doctor Hensey, who was convicted and received judgment of death. And there Lord Mansfield, by the concurrence of his brethren, as able assistants as the Chief Judge has had at any time, did lay it down, "that conspiring to levy war, is an overt act of compassing the death of the King." The meaning of an overt is, an act done by which the intention is disclosed. An overt act of the intention of levying war, or of bringing war into the kingdom, is settled to be an overt act of compassing the King's death. Soliciting a foreign Prince even in amity with the King, is such an avert act. "And so, (says Lord Mansfield) was Cardinal Poole's case." And one of these letters is such a solicitation of a foreign prince to invade the realm. "Letters of advice and correspondence, of intelligence to the enemy, to enable them to annoy us, or defend themselves, written and sent in order to be delivered to the enemy, are, tho' intercepted, overt acts of both these species of treason which have been mentioned. And that was determined by all the Judges of England in Gregg's case, (says his Lordship) where the indictment is much like the present." Then they held that the circumstances of the letters not being delivered did not alter the case;

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and to juſtify that, the obvious reaſon muſt occur to all your minds: That is—that no perſon could at any time be indicted, however miſchievous the treaſon, unleſs the letters had gone to the perſons for whom they were intended; in which caſe the traitor never could be laid hold of, at leaſt until after the evil had been done. I will read another paragraph: "It is for the Jury to conſider whether the letters were written by the priſoner at the bar, in order to be delivered to the enemy, and with intent to convey ſuch intelligence as might aſſiſt them in carrying on war againſt us."

I have now laid down clear poſitions, which will direct you as to the point of law, and to the object of puniſhment intended. I ſhall now ſtate how this indictment is laid, and go thro' the various acts proved to have been done by the priſoner to diſcloſe that intention: for the intention, if manifeſted by thoſe acts, or any of them, if ſupported by evidence, will complete the crime charged againſt the priſoner at the bar.

I ſhall endeavour (feeling great difficulty from my own inability at this late hour) to lay before you the impreſſions on my mind in ſuch order as I think you will beſt underſtand them. It will be your verdict, however, not that of the Court. It is our duty to ſtate what the law is. I have done that generally, upon the great point, and have only to add, that the common law of England and Ireland is the ſame, and by that, *one* witneſs is enough if you believe that witneſs; if he ſwears to the facts laid; if they are ſufficiently ſtated to have been his acts, and go to manifeſt the intention imputed to him. It is the opinion of the Court, that a ſecond, by the common law of Great Britain and of this kingdom, is not neceſſary. And the ſtatute of Will. III. which requires two witneſſes is not in force here. That this was the common law, appears to have been the opinion of Sir Michael Foſter, as high an authority as any other. He ſtates, (p. 233.) that one witneſs is ſufficient, if he has ſpoken to all material matters. And tho' Sergeant Hawkins is to be conſidered as a collector, and ſtates many doubts, yet he is one of the moſt laborious and accurate compilers in the law, and in that view deſerving of much credit. Having ſaid ſo much, let me bring you to the facts ſtated in the words of the indictment. William Jackſon is charged, "that at the time of open war," &c.—[His Lordſhip now, after adducing the authority of Juſtice Foſter, to ſhew that public notoriety, was ſufficient proof of an exiſting war, ſummed up the evidence with his uſual accuracy, leaving no one part of it unobſerved upon.]

When his Lordſhip came to remark upon the letters, read in evidence, he anſwered the objection of thoſe directed to Amſterdam and Hamburgh not being ſent to countries at war, but in alliance with England, by the argument, that from the manner of their encloſure, and the other corroborating circum-

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ſtances, it was evident they were not intended to reſt there; but to be forwarded to ſome other parts. He next adverted to the circumſtance of the outer ſuperſcription being addreſſed to one perſon, and the encloſure to another.--[Here his Lordſhip was interrupted by the priſoner, requeſting that he might have permiſſion to ſay a few words in explanation of thoſe facts--Which being complied with]

Mr. Jackſon ſaid, that whoever might have been the writer of the letter his Lordſhip had obſerved upon, which was directed to Mr Stone, under cover to Lawrence and Co. there was nothing inconſiſtent or myſterious in the manner of addreſs, for that Mr. Stone had a houſe in the neighbourhood of London, and was partner of a houſe in town, where his letters were uſually directed.--As to the apparent ambiguity of the terms of "Siſter-in-law, Law-ſuit, and Child," it became very plain, when it was known, that Mr. Beresford and his wife had parted many years, and had differences, and that they actually had a child.

The Chief Juſtice then went on, and ſaid, that it would be for the conſideration of the Jury, what the meaning of theſe letters was, and deſired that all the letters ſhould be read.--His Lordſhip then put it to the jury, that if they believed that Jackſon did put theſe letters or cauſe them to be put into the Poſt-office, for the purpoſes ſtated in the indictment, they muſt of courſe find him guilty. But if they thought, what was in the power of poſſibility, that this was all a ſcheme of a wicked man, to entrap and enſnare an innocent man, then they ſhould acquit; and if their minds were ſuſpended in a ſtate of doubt, they ſhould lean to the ſide of mercy.

The Priſoner.--There is nothing more within the power of poſſibility, than that theſe letters were going, as they *prima facie* purported to be, to neutral ports; and one even in alliance with Great Britain. There is no evidence to ſhew, on the contrary, that they were to be forwarded to the French.

Chief Juſtice.--I have ſtated that more favourably for you, than you have done for yourſelf.

The Priſoner then explained the word "Manufactures," in the letter to Stone; who, he ſaid, was not only a wholeſale merchant, but had erected a ſteam-engine, and was ſtudying the application of it to manufactures. He explained the ſignature of "Popkins," by ſaying, that in England being embarraſſed in his affairs, he applied to Cokayne to arrange them, who took a lodging for him by the name of *Popkins*. As to his being an emiſſary from France, this very circumſtance points out the abſurdity of it; for it was ſcarcely ſuppoſeable that that great and generous people, as it is repreſented I called

led them, would have ſent me over here, to bring about an invaſion and ſtir up a civil war in the country, without furniſhing me with the means of paying my debts.

The Chief Juſtice proceeded in ſumming up the evidence; which having done: He remarked, that Mr. Curran, who ſtated the priſoner's caſe, and obſerved upon the evidence, had ſaid, that a witneſs would be produced to contradict the teſtimony of Cokayne; but none was produced.—That when the Prime Sergeant had gone through half the reply, they deſired to call another witneſs to diſcredit Cokayne, who when he came could ſpeak of nothing more than his opinion of Cokayne's profeſſional practice. It was aſked—Why was not Mr. Tone called? but the Prime Sergeant anſwered, that Tone was not in their power, and if they had him, it might not be proper to examine him, where his evidence might convict himſelf. His Lordſhip again repeated his opinion, that two witneſſes were not neceſſary.—The next objection was, that Cokayne was not to be believed upon his oath, and they endeavour to blacken him by ſhewing the baſeneſs of his conduct; that he was the attorney and friend of the priſoner, and that it was unnatural for this man to turn againſt him.

It is for you, Gentlemen of the Jury, to conſider whether any perſon could ſo well have known what Mr. Jackſon was doing as the perſon concerned for him.—It does not appear he got any money; but ſtill if you do not believe Cokayne, you ſhould acquit the priſoner, although there are many ſtrong circumſtances beſides: but it is for you to think whether Cokayne deſerves credit, from the circumſtances of his conduct before and ſince the time he came from England, and from all the letters and papers produced to you.

I do not care to ſay much, however, it is my duty to ſay ſomething as to there being no evidence produced for Mr. Jackſon. He had been arreſted in April 1794, from that time to this he had ſuch opportunities as perſons in ſimilar circumſtances have, and yet no witneſs has been produced.

The Priſoner.—The laſt time the proſecutors put off my trial, owing to the non-attendance of Mr Cokayne, a Mr. Humphreys, and two or three others, were here ready to appear for me.—He was to have been here this time alſo, but being as I underſtand Enſign and Pay-Maſter in the Dublin Regiment, he was unfortunately ordered to the Iſle of Man.—He then ſaid that Mr. Keane, his Agent, was in Court, and could contradict that part of Cokayne's teſtimony relative to the papers being placed in his room by Cokayne the night before they were ſeized.

Conſiderable objections were made to Mr. Keane being examined at ſo late a ſtage of the buſineſs, and at a time when Cokayne had actually left the Court; but their Lordſhips at length acquieſced.

Mr.

Mr. Keane depoſed, that on the day he was employed by Mr. Jackſon, Mr. Cokayne called on him to give inſtructions for Jackſon's defence, and ſaid, "It was rather lucky that theſe papers ſaid to be found there, were not in his poſſeſſion."—Cokayne ſaid he was the friend of Jackſon, and dined with this deponent in conſequence, and told him that he had theſe papers, and put them in Jackſon's room on the night before they were ſeized!—This deponent further ſtates, that he has ſeen Mr. Tone four or five times, but has not ſeen him this month paſt, and knows not where he is at preſent. This deponent underſtood that Mr Tone had made his peace with the Crown, and was not to be proſecuted; that he heard ſo at a conſultation on Mr. Jackſon's buſineſs, and therefore he did not conceive he was bound to diſcover his authority. This deponent ſuggeſted this evidence of his to his Counſel before, but they did not think it neceſſary.

The Lord Chief Juſtice made ſome additional obſervations upon the evidence of Mr. Keane. He ſaid it came at a ſtage of the buſineſs that was very irregular, and could not have the weight it would at any other time, as Cokayne, whoſe teſtimony it was to encounter, was not preſent. With reſpect to the priſoner's remarks, they were not in general ſupported by evidence. But wherever they went to explain the writings, they ought to be attended to. Out of humanity, his Lordſhip ſaid, he ſhould forbear to make any comment upon what he had ſaid.

The other two Juſtices concurred in opinion with his Lordſhip.

The Jury were out 40 minutes, and returned at 4 o'clock in the morning, after a trial of 18 hours, with the verdict of GUILTY:—but recommended the priſoner to mercy.

Chief Juſtice—Why do you recommend him?

The Foreman mentioned ſome reaſons, ſuch as the priſoner's age, his ſituation in life, and his ſufferings during a long impriſonment.

Chief Juſtice.—Have you no other reaſon—then it is merely compaſſion. Have you any doubt?

Foreman.—No, my Lord; we have not any doubt.

Chief Juſtice.—Gaoler, take that man away, and let him be brought up in four days.

His Lordſhip then complimented the Jury on their conduct and their verdict. It was a century ſince the country had been curſed with a trial for ſimple high treaſon, and he hoped the example would prevent ſuch criminal attempts in future.

The priſoner on this event betrayed no ſymptoms of emotion but reſpectfully bowed towards the Court.

THUR-

THURSDAY, *April* 30.

The Court sat at half past 11 o'clock—The Prisoner in pursuance of the rule of Court, was brought up under a guard of soldiers as formerly, and in irons—After a while, the Attorney General came into Court, and prayed judgment on the prisoner.

Mr. Curran then moved, that the whole of the indictment should be read over, which gave rise to a desultory argument; but, after some time, the business was interrupted by the apparent sickness of the prisoner.

It appearing obviously to the Court, that the prisoner in the dock, who had from his first coming into Court, shewn symptoms of severe indisposition, was gradually verging towards dissolution:—Lord Clonmell observed, that whilst he was in this atate of insensibili y, it was impossible he could pronounce the sentence of the Court upon him. If Mr. Justice Foster had not mentioned a like instance of a woman called up at the Old Bailey, humanity would have suggested what ought to have been done.

Mr. *Attorney General*—I wish the state of the man's health was enquired into.

There being a medical person at hand, Dr. Waite, he was desired to examine the prisoner's situation, which he did, and reported from the dock, that there was very great apprehension of his dying, if he was not instantly removed.

Chief Justice—Let him be sworn.

Gaoler—He is a Quaker.

Chief Justice—Repeat an affirmation to him.

Before this was done, Mr. Thomas Kinsley, who was in one of the galleries, went into the dock, and having looked at the prisoner, declared his opinion that he was certainly dying. He was then sworn, and examined by the Chief Justice.

Q. What profession are you of?

A. An Apothecary, my Lord.

Q. Are you capable of forming an opinion as to the state of the prisoner's health?

A. I think I am, my Lord; it cannot be mistaken. He has all the symptoms of a person on the verge of death.

Upon this the Court made an order that he should be remanded; but this was found impracticable; for before the necessary arrangements could be made for his removal—he expired!

FRIDAY, *May* 1.

This morning, at 8 o'clock, an inquest was held upon the body of the prisoner, which had remained in the dock during the night, under a strong guard of soldiers. The Court upon its adjournment had recommended this enquiry to the Sheriffs,

but

but declined giving any instructions respecting the manner of holding it, either as to time or place. Mr. Kemmis, the Crown Solicitor, attended, assisted by Counsellor Ruxton. On the other hand, Mr. Keane, the Agent of the prisoner, assisted by Mr. B. Powell.

Several witnesses were examined. Mr. Gregg, the Gaoler of Newgate, said he had seen Mr. Jackson the night before, about 9 or 10 o'clock, when he appeared in health.—Yesterday morning, when he went into his room, Mrs. Jackson was there. He was sitting, and the witness observed that he looked very ill. — "You are not well, Mr. Jackson," says he.—"No," replied the prisoner, "I was up at four in order to be ready, that I might not keep the Court waiting." He asked the prisoner, whether he had eat any breakfast? who replied, "that he had taken a cup of tea, which always affected his nerves:"—On the table was a bowl which seemed to have had tea, and a manchet untouched. He then took up the chamber-pot and vomited; the sweat running down his face beyond any thing he ever saw. Mrs. Jackson was folding a cravat. Witness left the room. In about a quarter of an hour, Mrs. Jackson came to him, and said, "he was not finished nor cleaned yet." Witness went up again in about ten minutes—found the prisoner sitting in a chair. Mrs. Jackson said, "that she understood that he was to have irons put on him—that it was a sight she could not endure—she was six months gone with child, and the shock might be fatal." This was about 12 o'clock; she took her leave, and went down. Witness put her into the carriage, and returned to the prisoner, who was sitting up; but his eyes looked very ill. His whole face was incredibly changed. Witness offered him some mint water, and desired him to lie down and compose himself. Witness then saw the Sheriff, and represented to him the prisoner's state of health, which, upon feeling his pulse, he attributed to fear. When the prisoner was coming into the carriage with the Sheriff, he complained that the curiosity of the crowd hurt his feelings, and leaned backwards to conceal himself. When he came into Castle-street, he exclaimed, "Oh, I am very ill!"—When he came into the dock, every body saw how he appeared.—One of the Jury asked if he had vomited in the coach? Witness said not, but that there was some froth in his mouth.

Cross-examined by Counsellor POWELL.

Said, that when the prisoner was told that it was the feelings of his situation that affected him, he answered "No! for that he had bodily illness."

Surgeon Hume and Surgeon Adrien were both sworn, who after opening the body in the view of the Jury, seemed to have some little difference of opinion as to the certainty of his having

ing died by poison. They both agreed the stomach was very much inflamed. Mr. Hume alledged that no sudden affection of the mind, however it might occasion death, could produce excoriation in the stomach. It was true, he said, that where the subject had died suddenly of the gout, there was often found symptoms of inflation in that part of the stomach, resting upon the gut, particularly when the stomach has been full, but the affection generally commenced in the toe.

He was asked by Mr. Powell, whether this appearance in the stomach might not have arisen from putrefaction, as he had been so long dead? It does not follow from poison that the stomach in particular should putrify. He did not think the poison had passed from the stomach into the remainder of the system. It was probably prevented by spasm from circulating. Therefore the infection was entirely local, and the contents still rested in the stomach. He had known many die from agitation of mind; but then there were no such symptoms. He had been called to persons who had been poisoned by means of copper vessels, but never knew them to die suddenly. They generally vomit for twenty-four hours before death. The usual symptoms resulting from very violent poisons, were extreme distress and agitation of the body, attended with profuse and deadly sweats.—He did not think any man could live two moments with a stomach so affected. Never knew of any dying by metallic poisons without great pain, but knew that laurel water had been taken by Sir Theodosius Boughton, of which he had instantly died, without suffering probably much pain.—And upon the whole, gave his opinion that the prisoner's death must have been occasioned by poison.

Mr. Adrien was not so certain what the cause of inflammation might be, and thought it possible that the prisoner's death might have happened from very violent agitation. He said that from the yellow tinge upon his hands, it might appear how great a redundancy of bile had been lodged in the stomach.—To this Mr. Hume replied, that this matter did not so much appear to be bile, as the effect of corrosive sublimate, or some such cause, and that violent and sudden agitation did not increase the secretion of bile, but, on the contrary, obstructed all secretions; and that no stomach could contain so much bile, but would vomited it off, as every person affected by sea-sickness does, whenever any quantity is thrown into the stomach; and further, that bile so far from remaining upon the hands, after washing, would, having the property of soap, assist in cleaning them, and would come of more readily with cold water than with hot.

Mr. Adrien then observed, that the secretion of bile was proved to be very redundant, for there was very near a pint

rest-

resting in the gall-bladder, but gave due weight to Mr. Hume's reason touching the locality of the affection, and proposed examining further into that fact; which being done, and it appearing that no part of the intestinal canal was affected, these Gentlemen finally agreed—that the death was occasioned by some unusually acrid matter, taken into the stomach.

The principal tendency of the question put by Mr. Powell, was to shew, if possible, that the effects of a metallic poison, which could only produce this excoriation, would have occasioned more anguish and agitation of body, than appeared in the prisoner.

Mr. Gregg was further examined, and said, that the prisoner in the dock several times complained much, and "wished that it was all over!"—but witness then thought he alluded to the sentence, or execution of it.

VERDICT OF THE INQUEST.—"We find that the deceased, William Jackson, died on the 30th of April, in consequence of some acrid and mortal matter taken into his stomach; but how or by whom administered, is to the Jury unknown."

A small trunk was opened by Sheriff Powell, which had been the property of the prisoner, in which were found his own Answer to Paine's Age of Reason, an elegant miniature picture of his wife, and the following extracts from the Psalms:

"Turn unto me, O Lord, and have mercy upon me; for I am desolate and afflicted!

"The troubles of my heart are enlarged, O bring Thou me out of my distresses!

"Look upon mine affliction and my pain; and forgive all my sins!

"Consider mine enemies, for they are many; they hate me with a cruel violence!

"O keep my soul, and deliver me. Let me not be ashamed; for I put my trust in Thee."

Upon which Counsellor Powell took occasion to remark to the Jury, the improbability that a man, who had employed his last labours in vindication of the Christian religion, should have put an end to his existence in a way so incompatible with its principles.

THE

TRIAL

OF

An Action of Adultery

BROUGHT BY

THE EARL OF WESTMEATH

AGAINST

*THE HON. AUGUSTUS C. BRADSHAW.**

COURT OF EXCHEQUER.

THIS was an action on the case brought by the Right Honorable Geo. Fra. Nugent, Earl of Westmeath, to recover damages from the Honorable Augustus Cavendish Bradshaw, for *criminal conversation* with the Right Honorable Mary-Anne, Countess of Westmeath.

On the 20th of February 1796, the Jury being impannelled and sworn, Mr. Solicitor General proceeded to state the case to the Court and Jury. He said, that he felt with peculiar reluctance the duty which fell to his lot this day, but the task, however painful, was such as his duty to his client indispensibly bound him to perform. In common with every friend to morality and conjugal happiness, he felt for the depravity and incontinence he should have occasion this day to lay before a respectable and conscientious jury, who would, he was convinced, estimate from their own feelings the irreparable injury sustained by the noble Earl, who came this day to claim from the laws and the justice of

* This trial, whilst it exhibits Mr. Curran's abilities in another line, may be a seasonable relief to the reader's mind, already fatigued with plots and politics, treasons and treacheries — Like an interlude between the acts of a Tragedy, it will call his attention, for a little while, from the crimes of men to their follies—He will here get a useful "peep behind the curtain," a further view of human nature, of that part of it commonly called *High Life*. —— Let it also be mentioned, with profound respect to the higher orders, that the female who makes so conspicuous a figure in this Drama, is a *Lady of Quality*, one of the ornaments of Mr. Burke's famous pillar — If she had been one of the *Swinish multitude*, we would not have condescended to take any notice of her.

of his country, some reparation in damages, for the wound inflicted on his honour, his domestic happiness, and the comforts of his bosom, which no damages however great, could heal. The case was of itself so strong, and so very atrocious, as to render little comment indeed necessary beyond the facts which he was instructed would be substantiated in evidence.

The crime was of a nature as injurious to society as to the individual, and peculiarly so, as it was perpetrated in that rank of life which, while it aggravated the guilt, was most likely to render the example pernicious. In stating this case, it would be incumbent upon him to keep, indeed, very much within the limits of his instructions, and instead of going to the extent he might in explaining all the circumstances attendant on this shameful business, he should confine himself to those bounds which decorum and respect to the Court and so respectable a jury necessarily prescribed.

The noble Earl in this case, was several years ago married to his Countess,—a young lady of most respectable family and connexions, polished education, high accomplishments, and great beauty of person. The match on the part of the noble Earl was purely the result of love to the lady, and by no means founded on any considerations which could arise from her fortune; and the lady accepted his Lordship's hand as well from motives of reciprocal affection, as from the considerations of rank, honour, and the respect which she was likely to enjoy in an alliance with a nobleman of his Lordship's high rank, splendid fortune, and illustrious connexions. It could not indeed be supposed the lady or her friends, could have any possible objection to a match at once so eligible and advantageous. The slightest pretence of this sort never appeared or existed, and therefore the compulsion of parental authority in urging a young lady into a match violatory to her affections, or her delicacy, with a man of a disagreeable person, or advanced years, so frequently pleaded in extenuation for similar infidelities—could not be applied in this.

The noble Earl and his lady lived together several years, apparently in the happiest intercourse of reciprocal affection and domestic felicity, surrounded by all the blandishments which high rank, ample fortune, and fashionable splendour, could confer.—The lady bore his Lordship several beautiful children.

His Lordship, under all the tortures to which his feelings have been exposed on this occasion, impressed by the fondest affections of a parent to his offspring, the tender pledges of a once happy union with the woman he loved, had great unwillingness to bring forward this matter; but prompted by a sense of injury to the honour of his family, to the happiness of a husband and a father, he surmounted all obstacles of private reluctance, and resolved to appeal to the laws of his country for redress.

Mr.

Mr. Solicitor here related to the Court and Jury, what he had been instructed to say would appear to them in evidence; and then concluded with observing, that he had heard it whispered since he came into Court, this action was not a serious one, and that it was not the object of his noble client to amerse the defendant in very considerable damages; but this insinuation he declared was utterly false and unfounded. Would it be believed that the noble Earl who sued in this case, was so insensible to his own honour, or to the solemnity of a high Court of judicature, as to play with a subject of this sort, or to bring forward a trial so materially interesting to the honour of his family, himself, and his children, as a mere matter of form? Would it be believed that any man of profession, who held any regard for his own character or interest, would come forward, as privy to such a pretended trial, and conspire to impose on a court and jury? The thing was too absurd and ridiculous to be believed for a moment. The noble Lord had too great a regard for the dignity of his own rank, to harbour so mean an intention. The damages in this case were laid only at 20,000*l.* a sum, which considering the rank of the parties, the irreparable injury sustained by his client, on whose domestic happiness an incurable wound was inflicted, and the affluent fortune of the defendant, was by no means adequate to the offence. But to the feelings of the jury, upon the justice of the case he would submit the evidence, not doubting that their candour and impartiality would vindicate the confidence which the constitution and their country this day reposed in the important duty committed to them.

EVIDENCE *on the part of the* PLAINTIFF.

The Rev. George Lambert being sworn, said, That he had married Lord and Lady Westmeath on the 27th of April 1784—That during the first six years of their marriage, he was in the habit of visiting the family frequently, and therefore could venture to say with safety, that his Lordship and Lady lived in the greatest harmony and comfort during that time, but what has taken place since he does not know—He said, that he believed that Lady Westmeath lived in London, and Lord Westmeath in Ireland—He can't anwer for what happened in London—He does not know what might have happened with respect to Lady Westmeath's *private affairs*—thank God, he knows nothing of that sort!

Question by Mr. Curran—"Now Mr. Lambert, do you take upon you to swear that seriously?"—(a loud laugh in Court)

Answer—"I mean as to connexion of a criminal kind."——Lady Westmeath has two sons—He can't tell what property Lord Westmeath had, but always understood it was a large one.

Mary Cuttle was house-maid in his Lordship's house in Portman-square, London, and proved the very frequent visits of the Honorable Mr. Bradshaw to the Right Honorable Lady Westmeath; he usually came alone, and staid very late.

Mary Dunn, the Countess's nurse, also proved the frequent and unseasonable visits of Mr. Bradshaw, and that on these occasions, she had orders never to bring up the children—said, that Lady Westmeath slept out several nights, &c.

Eliz. Leeks was "her Ladyship's own woman,"—frequently saw Mr. Bradshaw with her Lady, and that she several times slept abroad during his Lordship's absence—she described the condition of the sophas, couches, &c. after these meetings, and how her Ladyship went to the Masquerade one night by stealth when Lord Westmeath was confined to his room by sickness.

John Doogan, her Ladyship's coachman, with a considerable quantity of brogue, gave a laughable description of the meetings of Mr. B. with Lady W. "in her *towers* round the Circular road"—the side blinds were up, but then the front curtains had not been completely let down, so that he had no doubt of what was going on in the carriage. *

Walter Kennedy, another coachman—his testimony went further to ascertain the nature of these coach interviews on the Circular Road, at noon day, in the face of the public. †

The cross-examination of these witnesses by Mr. Curran (who is a complete master of the *vis comica*) afforded much amusement to a very crouded court—It was with great difficulty that even the Judges could maintain their gravity—But we decline particulars; *we* must not disturb the gravity and decorum of *our* readers.——

Counsellor CURRAN, on behalf of the Hon. Mr. Bradshaw, his client, addressed the jury, with his usual and brilliant ability, in a speech of considerable length and ingenuity, through which we shall only attempt to follow him in his principal points, for indeed it was scarcely possible, in the bustle and pressure of an extremely crouded Court, accurately to follow the rapid and argumentative eloquence of that able Orator.

He said, that he was taught to expect from the strong and pathetic picture drawn by the learned Solicitor General, in stating this case to the jury, that some proofs would be adduced to establish what seemed so material, to the founding of any claim for damages in this case against his client. He was taught

* The Circular Road is a beautiful promonade and riding-place surrounding the city of Dublin, where all the Beauty and Fashion of the country go to shew themselves, some in carriages, some on horseback, and some (rather than not be seen at all) on foot.

† Our American readers, no doubt, will be surprized at the frolicksome pranks of this noble dame—If they were to read the *Crim. Con.* memoirs of Lady A. Lady B. and Lady C. down to the last letter of the alphabet (who, each in her turn, blazed short time in that vortex of dissipation, the purlieus of St. James)—they would perceive the benefits to be derived from privileg'd Orders—to what an a-mazing degree of refinement high-bred Aristocracy has arrived at in the west end of London, and what noble examples they set to low-bred Democracy at the east end of the city!

taught by that statement. to expect, that a body of evidence would be brought forward, to prove to the jury that his client had been guilty of an enormous breach of friendship, of honour, of hospitality, towards the family of the noble Earl, who was the plaintiff in this case. He was taught to expect, that strong and irrefragable proofs would be adduced, to shew that much of intimacy and confidence had existed between his client and the noble Earl, and that much of both had been violated and betrayed. He was taught to expect it would be shewn, that the noble Earl was a man, whose sole happiness lay in the fidelity of his wife, and that by the loss of that, through the consummate artifices of an arch seducer, in his client, the happiness of the noble Lord was irreparably lost for ever. He was taught to expect, some proof beyond doubt, that his client had made a base use of an intimacy with the noble Earl, to practice upon the innocent, inexperienced, and unwary mind of his lady, and to avail himself of the corruption of her morality and honour, in some unguarded moment, by triumphing over her chastity, the inestimable jewel of her rank and sex. He did expect, and so he presumed must the gentlemen of the jury expect, that proof would be adduced to shew, that his client was a man hackneyed in the trade of seduction, and hardened in the depravity of inexperienced years; and that lady Westmeath, was an innocent, virtuous, inexperienced, unsuspecting girl, in her teens, ignorant of the world, and unguarded against the snares, which a wicked, hardened, and experienced seducer might cast in her way.

But did any such point whatever appear in the evidence brought forward this day? No such thing.—No acquaintance amounting to what would be called intimacy, much less confidential friendship had been proved to have existed between his client and the noble Lord; no arts or stratagems of seduction appeared to have been practised on the part of his client towards the lady; and unless those points, upon which the whole stress of the claim of damages seemed to be rested, were fully and substantially proved, he trusted, that a jury of twelve rational and respectable men, would not suffer themselves to be cajoled, upon the mere representations of Council, unsupported by evidence; would not suffer themselves to be *swaddled* into a verdict of damages unfounded upon any just claim, even supposing the facts in evidence to be all true.

The jury would take into their consideration, that suppose the whole of the charges adduced this day against his client were false, how was it possible for Mr. Bradshaw to contradict the evidence, however innocent he may be of the facts. The charges were made against him by the servants who were in Lord Westmeath's employment and about his lady's person; they might be actuated by motives of malice or the hope of a re-

reward; they might have abused the mind of Lord Westmeath himself; and how was Mr. Bradshaw under such general charges, without any date specified, to be able to bring his recollection to proofs in his defence, more especially from those scenes in England, where the very privacy sworn to by the witnesses, baffles any possibility of evidence on the part of his client, to disprove their charges.

The sum of damages in such a case as the present, could only be ascertained by the indubitable proof of the facts charged, and the degree of the guilt attendant on those facts. The jury would, therefore, weigh well the circumstances of the evidence, and the kind of witnesses who gave it, before they would suffer themselves to be cajoled, or *swaddled* into a verdict, which would be the very reverse of that justice which, in the present case, they were sworn to render impartially between party and party: He did not wish to treat with jesting levity a subject of so serious a nature as the present; but really the charge of a young man, scarcely more than one or two and twenty, seducing the innocent, unsuspecting, *inexperienced* mind of a lady, who had been *twelve years married*, and practised in all the gaities of the fashionable world, was almost too ludicrous to be seriously attended to.

The witnesses who appeared this day, were servants who had been employed about the lady's person, and as they would be the strongest proof of the facts stated, in case they swore true, so were they, from their situation and circumstances, most likely to become the objects of subornation. The hopes of reward, of future patronage and protection, on the one hand, and the impossibility of detection on the other, were to persons in that rank of life, strong inducements indeed, to swear any thing that should be dictated to them in support of such a charge.

The learned Solicitor in stating this case, had pictured the Lady in the most delicate traits, a person elegantly fashioned! —a mind highly educated!—Manners highly accomplished! —delicacy most refined!—Sentiments most pure and virtuous! —But how was this *blushing* portrait suited to the original? —A Lady receiving male visitors in her dressing room; dashing from the play to the masquerade unattended by her husband, her friends, or even by her own servants; *swaggering* in a curricle through the streets of London with a gallant; and beating all the rounds of fashionable folly, dissipation, and extravagance!

See what the evidence of my Lady's waiting woman says, on the occasion.—She talks of her Lady's gallanting visits, received in her dressing room, with the privity of her menial servant—She describes the Lady, like an another Messalina, in loose attire, prepared for the embraces of her paramour: she

speaks

speaks of sophas daubed with powder and shoe dirt—the touzling of couches—the discomfiture of dresses—and the rumpling of her Ladyship's plumage!—But, in his mind, a female witness, who could be UP *to scene fainting of this kind*, was not exactly the kind of evidence that should meet the credit of a Jury—and if this woman should have sworn falsely, and Mr. Bradshaw was not an actor in any of those scenes, yet how is he to disprove of it by evidence?

If Lady Westmeath had so much command of her house, and such compleat dominion over her servants, while her Lord was in Ireland, and could make so shameful an use of her sophas, and her couches, in her own house,—what possible necessity could there be for his client to bring the lady elsewhere, to take her from home in his curricle, furnished with her night cloathes, and keep her out all night, unless it was—what no body could suppose—with intent to raise evidence against himself, and to give palpable foundation for such an action as the present.—The jury would therefore take into their consideration the whole of the evidence, and judge of its probability.—And upon this ground he would trouble them with another observation or two.

With respect to the evidence of what was alledged to have passed in England, there was no positive proof whatever to warrant a verdict which was to impeach the morality, and affect the property of his client.—Every young man of fashionable gaiety would pique himself on gallant attentions to a fine woman if she would permit them. The evidence, such as it was, stated nothing more than mere presumptive circumstances; but from such proofs, and such, testimony, a conscientious Jury could not, he thought, feel their minds so far convinced beyond doubt, as to justify to their own consciences, a verdict against the defendant.—And with respect to the facts alledged to have happened in Ireland, how did the probability stand?—upon the testimony of two coachmen!—But every man who considered their assertions for a moment, must think it as improbable as it would be extraordinary, that a Lady of her rank, who might have commanded an hundred places—and opportunities for such purposes—would have chosen to expose her amours to the privity and black-guarding scrutiny of her coachman and footmen—and this too in her own coach, upon the high road, in broad day, when so many people were passing and repassing, he thought it a most enormous improbability, that a woman of her rank would be guilty of a fact so beastly and so shameless!—it was scarcely to be believed of the most libidinous prostitute—and therefore he trusted the jury would be extremely cautious indeed, before they believed such assertions upon such kind of testimony, on a charge so materially affecting the family, the fame, and the property of an individual, whose only reliance in this case, for justice, was the

sound

sound discretion of an honest, conscientious, and discerning Jury.

But if the Jury should differ with him as to the probability of the facts, the next thing to be considered was the *quantum* of damages which ought to be demanded in such a case. He owned he did expect from the statement set out by the learned Solicitor on the commencement of this trial, that some evidence would be produced to prove the existence of an intimacy or familiar friendship between his client and the noble Earl who was plaintiff in this case, or that some extraordinary stratagems had been used by his client to debauch the morals and entrap the chastity of an innocent, virtuous, inexperienced young Lady—in order to justify his Lordship's claim for damages; but no such proof appeared:—no violence to friendship, no hospitality had been even attempted to be proved against his client. Much had been said of the wounds inflicted on the feelings and domestic happiness of the noble Earl.—Such indeed might be the plea of a man in the humble industrious walks of life, the inexperienced innocence of whose conjugal partner falling a prey to the stratagems of some artful and practised seducer, might indeed be said to deprive him of the affections of the partner of his humble industry, the fond attendant on his sick bed, the frugal companion of his thrifty but comfortable board, the friend and mother of his rising offspring, and the object of all his hope, all his affection, and all his felicity.—Such a man indeed might justly complain of the privation of all his comforts, and the most incurable wounds inflicted upon his earthly happiness, and such a man would come to a Jury of his country with the justest claims for reparation in damages against the wealthy and artful seducer. But did the plaintiff in this case come forward with such claims?—In the breasts of the great folks of the present day, *fashionable manners*, there was but too much reason to believe, had repressed those feelings upon such topics, though they might, in the coarse and vulgar feelings of men in humble life, wear the greatest *accumen*.

The loss of comfort, the privation of happiness, was by no means so great in fashionable life; for there, the wife was not the constant partner of her husband's pleasures, or his discomfitures—nor the affectionate nurse attendant on his sick bed—nor his fond comforter in adversity—nor the protector of his children when he dies.—For, in fashionable life, *dissipation*, not *comfort*, is the object of both, and the man of rank has his consolation *in another way* for those infidelities, which, perhaps, owe their origin *to his own misconduct* — 'Tis to the pang of suffering, and not to the plumage of title that compensation is due.—The Jury therefore would not suffer themselves to be bantered into an idea, that *a great man* was to have damages in a case of this sort proportionate to his *titular rank*, without advert-

verting to the proportion which the injury bore to his feelings, and the cause of that injury to his own conduct.

Could it be supposed—that the tender feelings of conjugal affection and domestic comfort bear the same proportion as in humble and industrious life, in those ranks of fashionable dissipation, where, while the husband lavishes his time and fortune at the club-house, the banquet, or the gaming table, night after night,—the wife rolls her voiture, at midnight, from theatres to drums, from drums to routs, and from routs to masquerades, attended by her cudgeled footmen and blazing flambeaux, and dashing through all the rounds of *fashionable rakery*, from midnight till morning ?—In such a round of *modern high life*, the idea of domestic comfort and conjugal felicity, is mere *Arcadian fancy*. The learned Gentleman, in painting the injuries sustained by his noble client on this ground, knew very well he was painting from the scenes of " his early reading," and not from his own observations on modern manners ; and if such feelings, under such circumstances, were only to be found in the romance of Sir Philip Sydney's Arcadia, the damages in such a case ought not to exceed the price of the book.

It was stated that Lord Westmeath's feeling were agonized, and his pride irreparably hurt, by losing " the consolations and comforts of his Lady's company and conversation !"—Lord Westmeath, in Ireland, *rolling* away with one equipage for months together, in all the rounds of fashionable luxury and amusement, in the enjoyments of the bottle, and the pageantry of the camp—And Lady Westmeath, in London, *swaggering* away in another equipage in all the rounds of fashionable dissipation and amusement—for months too—And then poor Lord Westmeath complains of " the loss of his comforts !" in the privation of his Lady's company and conversation, not more than 200 miles from him, by his own choice, for eight months together !—The idea, was in fact, too ludicrous for the serious reflection of a rational and discerning jury.

One point, however, was most important for their consideration.—It was whether the plaintiff in this case had taken that care of the morals and the conduct of his wife, which his *authority*, and his *duty*, as an husband, enabled and called on him to do ? How did the fact appear in evidence ?—Lord Westmeath comes over to Ireland—and leaving his wife in London, exposed to all those temptations which a round of gay life and fashionable levity might be supposed to present—with a fortune, an equipage, and an house at her command, complete mistress of her own conduct and propensities !

How stood the charge with respect to his client in this case ? What had appeared from the evidence of the Clergyman ?—Lady Westmeath, not as the learned Solicitor had painted her Ladyship, an innocent young female, inexperienced, and such

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as might be supposed unwary and unripe in the ways of the world;—but an *experienced matron*, twelve years married, the mother of several children, and well practised in all the mysteries, modes, and dissipations of the gay world.—What was Mr. Bradshaw? not an experienced rake, versed in the arts of seduction by the vicious practice of years, but the younger brother of a respectable family, not many years emerged from the controul of his tutor—and of an age young enough almost for the Lady to have been his mother.

Was this the young lady of innocence and inexperience, polished education, exalted sentiments, and refined feelings whom the learned Council had painted in such glowing and angelic tints—with the bloom of the plumb unbroken upon her cheek—and all the blossoms of youthful innocence flowering and flourishing around her?—Was the lady a bird of that age likely to be caught with the sort of chaff which his youthful client might be supposed to cast before her, *if her own inclinations had not led* her *to be the* DECOY *without the necessity of stratagem?*

Suppose that on the part of his client, he were to admit the whole of the facts stated in evidence—yet, would not the jury consider the rank and the *years* of the Lady—the utter improbability, that any advances of a criminal kind would have proceeded from a *young* gentleman, who, from his years, must be supposed inexperienced in the dissipations of fashionable life, as his client was; and would not the jury consider the uncontrouled freedom in which Lord Westmeath permitted his Lady to range through all the rounds of fashionable dissipation—exposed to all those temptations that beset a woman of levity—absent from her husband—unchecked by the vigilance of her friends,—and prone to every indulgence in pleasure and luxury, which her rank and fortune could supply.—And would not a jury thus considering, even if they believed the facts, make a wide difference indeed between the imputed guilt of his client, and that of a common seducer, who had triumphed over the chastity of an innocent and inexperienced female?—They must surely consider his client rather as *the party seduced*—and in estimating the damages, if they should think any were justly due, they would apportion them to the feelings, and not to the rank of the plaintiff—they would consider, how lightly *bagatelles* and *faux paux* of this kind were thought of in the circles of HIGH LIFE.—They would consider how far his Lordship's own conduct and neglect were instrumental to the injury of which he complained—They would estimate the uncontrouled influence of modern and fashionable manners upon the minds of high rank—and find such a verdict as, upon due consideration, became the good sense and conscientious justice of moral and discerning men.

Coun-

Counsellor *Saurin*, on behalf of the Plantiff, said, that considering the strength of the Evidence adduced on behalf of his client, and the irrefragable proofs upon which his case had been substantiated, he felt no necessity to say any thing to the Jury, in reply to what had fallen from the learned Council on the other side; notwithstanding the eloquence and ingenuity with which he had argued, on behalf of his client; he should therefore rest with the discretion of the Court, for any observations upon the evidence, in this case, which might be deemed necessary for the direction of the Jury.

Lord Chief Baron Yelverton then addressed the Jury, observing, that the present case was of such a nature as required very little exertion indeed, on the part of the Plaintiff's Council, to aggravate the injury proved in evidence; a case, so attrocious in all its circumstances, so fraught with the most shameful and abandoned depravity, and so violatory to every principle of decorum, of virtue, of morality, and of female modesty, as, he thanked God, was not to be matched by any other example in *this* country.

The proofs in this case were manifest—were strong—were circumstantially corroborative of each other—and stood wholly uncontradicted by any evidence to the contrary.—The jury could therefore, in his mind, have no reasonable doubt of the fact.—It would be then for them to consider, under all the circumstances of the case, the culpability of the defendant, and the nature and magnitude of the injury sustained by the plaintiff—an injury, which no pecuniary consideration however great, could compensate, and he doubted not that the jury would find themselves justifyed in giving such damages, as, while their verdict marked the regards of moral and conscientious men for the sacred rights of the conjugal bed, should at the same time, hold out an example to check and deter the progress of a crime in this country, which, of late years, had made such alarming strides in another kingdom, whose *fashions* and whose *vices* we are too apt to borrow, and which, there was but too much reason to fear, were rapidly gaining ground in the fashionable circles of this country.

The Jury, after a short consultation, returned a verdict for the Plaintiff, *Damages* TEN THOUSAND POUNDS!

A

BRIEF ACCOUNT

OF THE

TRIAL

OF

*WILLIAM ORR.**

CARRICKFERGUS ASSIZES.

MR. Wm. Orr, a wealthy farmer of Faranshane, in the county of Antrim, was committed to gaol for High Treason, under the following warrant of commitment, bearing date the 17th of September, 1796:

County of Antrim, to wit, } By the Hon. Robert Stewart, commonly called Lord Viscount Castlereagh, one of his Majesty's Justices of the Peace for said County.—

To the high and petty constables for said county, and their assistants, and to the keeper of his Majesty's gaol for said county at Carrickfergus.

I hereby send you the body of Wm. Orr, who stands charged by examinations upon oath, taken before the Rev. George Macartney, one of his Majesty's Justices of the Peace for said county, with High Treason, which examinations upon oath have been laid before me.

These are therefore in his Majesty's name, &c. &c.

(Signed) CASLTEREAGH.

At

* This account of the trial of Wm. Orr the Editor has inserted in this place, as a necessary introduction to that of Peter Finerty. The admirable speech of Mr. Curran on the trial of the latter, thought to be the most brilliant in this collection, or perhaps in the English language, seemed to require some illustration from the melancholy and affecting story of Orr, who may be considered as the protomartyr, or first victim that fell in the late rebellion—a *rebellion*, because it was unsuccessful.

The Editor has to lament, however, that he cannot give a full and regular account of this trial, with Mr. Curran's speech at length, as the government prohibited all publications on the subject, and threatened all printers with military execution if they attempted such a work.——See account of the destruction of the Star Office at the end of this trial.

At the Lent Assizes 1797, he was arraigned on an indictment framed under the Insurrection Act, for administering unlawful oaths; he then pleaded not guilty, but his trial was postponed on his affidavit, stating the absence of a material witness.

At the late assizes he was put upon his trial, on Monday the 18th day of September, before Lord Chief Baron Yelverton; two witnesses appeared against him, one of the name of Wheatly, and another of the name of Lindsey, both private soldiers in the Fifeshire regiment of Fencibles.

EVIDENCE *for the* CROWN.

Wheatly swore, That in April 1796, he had been in Scotland on furlough, and was on his return by Antrim to join his regiment then quartered at Derry. That he then, upon the 24th or 25th of that month, met with several persons, who swore him into the brotherhood of United Irishmen, and afterwards took him to the house of the prisoner, whom they found employed in sowing flax in his field. He swore that an assembly was called in the house of the prisoner, who acted as Chairman or Secretary, which he called a Baronial Committee; and that there it was debated, whether he should be entrusted with the printed constitutions of the Society, in order to promote the institution among his fellow soldiers. That it was agreed that he should have one. That an oath was thereupon administered to him by the prisoner, which was to keep the secrets of United Irishmen, and not for any reward or punishment to discover on them. The witness threw in many circumstances about arms and a Northern Star, which were shewn to him, also a draw-well to put the Aristocrats into.

He swore that all he did was through fear of his life which they threatened. That he was told they had armed men enough to get a reform by force, if they could not by fair means; and that if they did not get a reform by fair means they would overturn the government.—He said, the intention of the Society, and consequently of the prisoner, was to assist the French; that it was so explained to him, and that at that meeting it was so determined; and added many circumstances of aggravation, tending to represent the oath and the association as hienously wicked and treasonable. And at same time swore, that the book from which the oath was administered was given to him as his guide. — On his cross examination by Mr. Curran, he denied that he had ever offered to desert, or asked money with that view from any body, but was offered money to induce him by a person in Belfast, which he refused. He was asked if he had sent any cartridges to Mr. Orr, when in prison, as a token? and answered he believed not. He was asked, whether he ever told any person that he had taken the test of a soldier in a certain way that suited his own mind best, and that he never was satisfied as a soldier? This he denied, but after some pause

went

went on, "unless it might be to some of the United Irishmen before I knew what they meant." He denied that he ever said he intended to desert, tho' he might have said he was drunk when he enlisted.

Q. Had you ever any conversation with one Walker a soldier about being Up?

A. I never advised him to be Up.

Q. Had you ever any such conversation with Walker?

A. I might endeavour to learn what he knew about being Up.

Q. Did you ever tell him he might take the oath of secrecy without going further?

A. I told him I would shew him what was in my pocket-book, which was only a parcel of old letters.

Q. Did you ever tell him how you, *United Men*, got powder from abroad in flaxseed hogsheads, and how you had smiths at work making you pikes?

A. I never told him of powder; what I might have told him about pikes was only in the way of a whim.

The second witness Lindsay, did not attempt to swear anything of the words, nor even of the nature of the oath, whether it was innocent or guilty, lawful or unlawful—He only said, he was in the room when an oath was administered, and of course was dismissed by Mr. Sampson without any cross examination, as a witness, whether swearing false or true, totally immaterial.

Here the evidence closed for the Crown.

The Counsel for the Prisoner, Mr. *Curran* and Mr. *Sampson*, now insisted, That from the evidence in this case, if the prisoner was guilty of any thing it was High Treason—That they believed him innocent of that and every such charge; but in order that that matter might be investigated according to the known law and constitution of the country, the present indictment must be given up, or quashed, and a bill for High Treason sent up, otherwise it was in vain that the wisdom of former times, that the experience of ages, and the voice of the wisest and most upright judges hath allowed and sanctioned, the statute 25 Ed. III. called by Lord Coke the Blessed Statute, as the parliament which enacted it was called *Parliamentum Benedictum*. It was in vain that this excellent statute, never deviated from but for the worst of purposes, and in the worst of times, had given to the accused of treason so many securities against that power ever too likely to be exerted against an individual accused and prosecuted by the Crown, for any alledged offence directly against the Royal power. Experience had shewn how horribly the accusations for high treason had been multiplied by princes, or their ministers—How hard it was for any subject to have a fair trial against whom the angry brow of offended Royalty was knit; against whom the treasure of the nation was lavishly employed; against whom influence, authority, and power, open

and secret, were hostilely arrayed; when the Sheriff might be a dependant on the bounty of the Crown, as in times of baseness and oppression usually had been the case, since Sheriffs ceased to be elected by the people; who might be induced to select from his county, not the indifferent, the disinterested, and unbiassed, to pass judgment upon their fellow-creature's life, but the ignorant, the bigotted, the servile, or the mercenary; who, like the executioner, forgetting that they were sworn to judge of the guilt or innocence of the accused according to the evidence, and make true deliverance between the King and the prisoner, might only await the beckon of Authority to do their office.

So careful had the law of England been to guard against the various ways by which power might oppress and defence be borne down; against the partiality or frailty of judges, juries, factions and parties, that in England a man to be tried for such an offence as was now attempted to be proved, would under the 25th Ed. III. have a list of his jurors delivered to him in due time, in order to be well prepared to challenge such as he did not think impartial.—He would be entitled to thirty-five peremptory challenges, and as many more as he could shew reasonable cause for challenging.—He would be entitled to a list of witnesses for a length of time previous to his trial, in order to enable him to sift their character, and if it was bad or vile, to be able to make that important circumstance appear to the jury so as to set aside such testimony in the whole, or in part, as the case might warrant; and *two* witnesses, at least, must swear to the same treason before he could be affected.—He would also be entitled to a copy of his indictment five days at least, before his trial, in order to apprize him of the exact nature of the charge to which he was to apply his defence.—And lastly, he would be allowed, by his two counsel, to make a defence by observations upon the law and the fact of his case, and to utter fully and boldly whatever might tend to direct the consciences or inform the understandings of his jury as to his intention, which is, in other words, as to his innocence or guilt.

For what reason, might be matter of curiosity, but nothing to the present case, there was less protection and less indulgence to the accused in Ireland, but still there was a great deal in case of treason to make the law esteemed. But see how all these wise and boasted provisions of freedom and glories of the English law will be filched away, if high treason (for such it is if any thing) specially prosecuted by the Crown, out of the stock-purse of the nation, by the King's attorney general, and other select and able lawyers of the Crown, in times so heated, and a situation so critical, that if ever there was occasion for these blessed protections against prejudice and power, it is that time; when so great a part of the community is accused, and

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secret informers publicly advertised for, if high treason be tried under this Insurrection Act, made hastily on the spur of an unfortunate occasion, and happily, if not already expired, shortly about to do so. The prisoner will be tried it is true, and possibly be found guilty; but it will be a finding contrary to the most sacred law, and a violation of that statute which stands now almost singly the glory of our national jurisprudence, and the bulwark of public security—Better would it be to wait until the legislature should repeal or suspend this statute, if they so thought fit, as they had already done the Habeas Corpus Act, than for a court of justice thus directly to do so by trying, under another form that which if it be any thing is high treason—For thus the unfortunate prisoner is deprived of every safeguard, and even of that natural right of the accused, to explain his own intentions and reasons upon the nature of the testimony offered against him.

Perhaps a few observations by those whose professions have taught them to discriminate between the fictitious and artful relations of a hired informer, and the simple tale of truth, might tend to save the life of an innocent and honest man; if so, terrible indeed would be the consequence of the prevention. That peculiarity in our law, that tho' in cases of the smallest import counsel shall be heard at length, whereas in capital felonies their mouths shall be shut, is reconciled by supposing the judge a counsel for the prisoner; but that was a forced supposition, and against the fact and nature of mankind. The makers of the wise Statutes of Treason knew that judges were men in a station greatly exposed to influence, and guarded against their frailties.—They knew that judges, however upright in their intentions, could not take the pains of studying a prisoner's case, as he himself or his counsel could; and that in any cause which implied a contention between the higher order of society and the lower, with which he had neither intercourse nor fellow feeling, it required virtue, sagacity, and magnanimity enough, to be merely indifferent.—That a most cogent reason for adhering to the good old law, and the exact and precise classification of offences was, that in this very case, though the prisoner was tried and acquited under this indictment, yet it could not be pleaded in bar, without averments dangerous and difficult to an indictment for high treason, which might be supported by the identical testimony, and thus a man might be twice put in jeopardy of his life for the same offence.

Mr. Attorney General made a very short reply to these arguments; he called upon any man to say in what instance he had prosecuted with any unbecoming rigour; and whether, on the part of the Crown, throughout the circuit, the business had not been conducted as mildly and as mercifully as possible.—He also made some observations upon what seemed to him an

extraordinary motion, where the counsel for the prisoner sought to have their client tried for a deeper and more penal offence than that for which he had been already indicted by the Crown. He could not conceive that the gentlemen expected any further benefit from this motion, than that it gave them an opportunity of addressing the passions of the audience.

The Lord Chief Baron, after hearing both Counsel for the prisoner at length, refused the motion, observing, that he had heard it patiently, by which it might appear, that the prisoner had no cause to complain of rigour or hardship; although the arguments seemed not so much directed to him, as artfully and ingeniously designed, under the pretence of addressing the Court, to affect the minds of the jury and by-standers.

EVIDENCE *for the* PRISONER.

On this the Counsel for the prisoner called a witness of the name of Charles M'Claverty, in order to discredit and contradict the testimony of Wheatly, who swore, that in January last he overtook Wheatly, with one Serjeant Millar, on the road from Ballyclone to Carrickfergus; they went together into an ale-house on the road-side to drink, when a man, who was lying on a bed in the room where they sat, spoke to Millar and claimed acquaintance with him, having served with him abroad. Nothing further happened there, till Wheatly called the witness out and proceeded on the road together. That Wheatly asked this witness whether he knew Orr the prisoner at Carrickfergus, and whether he would go to the gaol in order to befriend him? and the witness answering, that he neither knew Orr, nor could get into the gaol if he wished it, Wheatly pressed it, saying, you must try to do it, and all you have to tell him is, that if he will give me a coloured coat and some money I will desert, and if he will provide Lindsay with another coat and two guineas, I will persuade him to desert also, adding, that Lindsay was as ready to desert as himself. That it was for his principles that he (Wheatly) had been flogged at Ballymoney, and that he was so true, that he had destroyed the United Irishmens' papers at the time of taking off his coat, which made him sorry, as he had preserved them carefully through all the towns. That Wheatly again pressed the witness to go to the gaol for the sake of the prisoner, to which the witness replied, that if he did go, Orr would not trust him, as he was a stranger; upon which Wheatly held out his hand with a cartridge, calling it a secret note to serve as a token that he came from a soldier; he at the same time said, that it was not he, but Lindsay, that swore against Orr, and that Lindsay was so false, that he would swear the hill of Howth in Scotland was no bigger than a pound of candles!*—Here he stated that Serjeant Millar came up, and the conversation ceased. That he

* Here the foldier made a blunder—The Hill of Howth ſtands on the north ſide of the beautiful bay of Dublin.

he the witness, when he arrived at Carrickfergus, got a pass from a magistrate into the gaol, where he was introduced by one Storey to Orr, to whom he told what had passed between him and the soldier—Orr's reply was, that the soldier must be a villain. Upon returning to Wheatly, he was again urged to carry a message into the gaol to Orr, but refused.

This witness was very strictly and sharply cross-examined by Mr. Attorney General. He said that his errand was to Carrickfergus before he had met with Wheatly, for the purpose of enquiring whether a guinea sent to a free-mason there had been delivered or not. A circumstance which seemed to raise suspicion in the mind of the Attorney General and the Court was, that the witness admitted the pass which he obtained from Mr. Shaw the magistrate to go into the gaol, was not to see Orr, but another prisoner; and because he also admitted, that previous to his coming up with Wheatly on the road, he had had a conversation with a person, who told him, that if he would push on, he would overtake the soldier who had sworn against Orr, who was but a short way before him, and that he did thereupon push on and overtake him; from which an inconsistency seemed to be inferred, inasmuch as he had sworn on his direct examination, that the conversation touching Orr had begun on the part of Wheatly.

John Young called, further to contradict Wheatly.—He proved that Wheatly had told him, that he was not only drunk when he enlisted in Scotland, but that he had taken the test oath, so as to suit his own mind, which saying Wheatly had denied on his cross examination.

To impeach the testimony of M'Claverty, the same Serjeant Millar, who was found to be in Court, was brought upon the table, and swore, That no such conversation had passed between Wheatly and M'Claverty, because if it had he must have heard it, as he had walked along with them from their leaving the house where they had stopt to drink, 'till they came within a quarter of a mile of Carrickfergus.

This was the substance of this witness's testimony on his direct and cross examinations.—But he was called back by Lord Yelverton, who, with a view of sifting the minute circumstances of M'Claverty's testimony, asked him, whether he had talked in the public-house, as M'Claverty had stated, with a man lying in bed, who had formerly been in his regiment?—To which he answered, That he talked with a person in bed who served abroad, but not in the same regiment—so far confirming instead of contradicting M'Claverty.

These two witnesses so far disagreeing in their testimony as that one swore to a conversation having happened, which the other positively swore could not have happened, the Rev. Foot Marshal was called with respect to the character and credibility

ty of M'Claverty, who swore, That he had been in his service for a year; he knew him, and believed him incapable of swearing to a falsehood. On this cross examination, he admitted that M'Claverty had left his service when a boy, but said that he had been his near neighbour ever since, and bore the best character. *——Here the Evidence closed.

The Lord Chief Baron summed up from his notes, and particularly dwelt upon the testimonyof Wheatly, which he thought as satisfactory as any he had ever heard, insomuch, that he was convinced he must have had an education greatly above what usually falls to the lot of men in his situation, and proceeded in a strain of observation highly complimentary to this witness, adding, that so far as Lindsay's testimony went, it confirmed what he had said. His Lordship seemed to have conceived a different impression of the prisoner's witness M'Claverty, upon whom he made severe animadversions, observing, at the same time, that he was contradicted by the Serjeant Millar.

The jury retired about seven o'clock, and remained till six on the next morning, when they came out into Court to meet the Judge, and were desirous of giving a verdict so qualified as to save the prisoner's life.—When asked by the Clerk of the Crown if they were agreed, no answer was made for some time—the question being repeated, the Foreman, much distressed, answered, "we leave him in your Lordship's mercy" "he is in your Lordship's mercy."—On which the Judge desired them to return and consider of their verdict. Ten of them only returned, two remaining without. They returned again, and very nearly the same thing was repeated, and it was not till the third time the Foreman still hesitating to pronounce the word *Gnilty*, Mr. M'Naghten, one of the jury, reprimanded the Foreman, calling upon him to pronounce the prisoner guilty—upon which the Foreman, who was a man in years, and affected even to the loss of speech, handed in the verdict, with a recommendation to mercy, which was taken by the Clerk.

The Judge promised to lay their recommendation before government, and it was understood by some, that he would represent his case favourably himself. But on the following day he mentioned in Court, that he had not pledged himself so to do, but had immediately transmitted by express the recommendation of the jury.

The prisoner heard the verdict without the smallest agitation, and was immediately remanded to gaol.

On

* Several Officers of the Regiment were in Court, but none were called to the character of these soldiers.

On Monday the 18th, Mr. Justice Chamberlain, by desire of Lord Yelverton, assisted in Court.

A motion was made by the prisoner's Counsel in arrest of judgment, and argued at considerable length by Mr. Curran, followed by Mr. Sampson——The arguments consisted of two branches—1st, That no crime was alledged upon the record of which the Court could have any cognizance, or upon which any judgment could be passed. — 2dly, That the act of parliament under which the prisoner was indicted, was no longer in existence.

As to the first point it was said, that the charge in the indictment was, that the prisoner did contemptuously, maliciously, and feloniously administer a certain oath, or engagement, upon a book, which oath and engagement imported to bind the said Wheatly to be of an association, brotherhood, and society, formed for seditious purposes.

Another count for procuring him by threats and persuasions to take like oath.

Another count was for contemptuously, maliciously and feloniously administering an oath not to inform against a seditious confederacy.

And another for procuring him by threats and persuasions to take such oath.

Such were the several charges against the prisoner; but still it came to the same thing.—The question was, whether there was any direct averment of the criminality of the obligation ? It was now to be taken *ex concessis*, that every oath administered by a person not duly qualified by law, was not a capital felony within the insurrection act, for that would be to make felons guilty of death upon the gallows, not only all the free-masons and friendly brothers in the kingdom, who take oaths of secrecy as to the concerns of their respective institutions, but most certainly those persons who have associated secretly and mysteriously under the denomination of *Orangemen* in this unfortunate kingdom. This being the case, the criminality of the association was the only thing to be enquired into, and if this be not specifically and distinctly alledged upon the record, there can be no judgment; for the most incontrovertible principle of our law, both criminal and civil, is, that every judgment must be *secundum allegata et probata*. It is not enough that it be proved, unless it be alledged, no more than it is enough to alledge it without proving it; for suppose the Grand Master of the Masons of Ireland were to be indicted for seditiously, contemptuously, maliciously, and feloniously administering, or persuading any one to take an oath to keep secret what should be revealed to him, or to be present at the administering of an oath, binding any one to be of a society, or keep the secrets of a society, to which was to be tacked the words formed

ed for seditious purposes, and evidence were given of his being a free-mason, and having actually administered an oath of secrecy, and an ignorant or prejudiced jury to find him guilty, because it was clearly proved, that he belonged to an association bound together by an obligation of secrecy, would any learned judge, even tho' there were such finding, careing for the laws, pronounce sentence of death upon that record, merely because there was the epithet malicious inserted, which is no more than a word of course; or because it was said to be a seditious association, without shewing how or wherein it had been seditious?

If a man were to be indicted "for not having the fear of God before his eyes," and a jury were to find him guilty, surely no judge would pronounce any sentence against him; for in the words of the law, no indictment would lie for not having the fear of God before his eyes, and as surely none would lie "for being seditious," much less "for binding another to be seditious." The law in most cases was so jealous of fanciful or constructive charges, and of multiplying offences indefinitely, that it expressed crimes by technical expressions so precise, and definitions so exact, as to exclude all inference or construction.—Thus murder is a homicide of malice afore-thought; burglary a breaking of a dweling-house in the night, with intent to commit a felony, and so of other offences. Now when the law has appropriated any complex term to express a crime, no periphrase can be admitted, because of the uncertainty; but when there is no such term, the crime must be alledged as clearly as language can express it.—Juries answer to the matters of fact, the judges to the point of law; the jury is sworn to decide according to the evidence, the judge must look to the record as the warrant of his judgment.—If it do not state some distinct offence, let the verdict be as it may, he cannot take upon him to give judgment; for tho' the grand jury may find facts, they cannot find crimes not known to the law.

The rule of construction in all indictments is well laid down in 2 Hawk. 320. Tit. *Indictment*, sect. 57. "That the special matter of the whole fact ought to be set forth with such certainty, that it may judicially appear to the Court, that the indictors have not gone upon insufficient premises." And up on this ground it is agreed, that an indictment finding that a person hath feloniously broken prison, without shewing the cause of his imprisonment, by which it might appear, that it was of such a nature, that the breaking might amount to felony, is insufficient. An indictment charging a man with a nuisance, in respect of a fact which is lawful in itself, as the erecting of an inn, and which only becomes unlawful from particular circumstances, is insufficient, unless it set forth some particular circumstances which make it unlawful. An indictment for perjury must

must shew in what manner and in what court the oath was taken.—An indictment for procuring must shew the false tokens.

In the same book, page 322, sec. 59, it is said, that every indictment must charge a man with some particular offence, or else with several particularly and certainly expressed, and not with being an offender in general; for no one can tell what defence to make to a charge so uncertain, or to plead it either in bar or abatement of a subsequent prosecution.—Neither can it appear that the facts given in evidence against a defendant, on such a general accusation, are the same of which the indictors have accused him.—Neither can it judicially appear to the court what punishment is proper for an offence so loosely expressed. Therefore, it is not sufficient to charge a man with being a common defamer, a disturber of the peace, or of being a man of evil behaviour, or a common conspirator. The only exception to this rule is a common barrator, and that because it is a term of art. And so cautious is the law of giving a dangerous latitude even in a single instance, that it has rendered it necessary to give the defendant a note of the particular act of barratry intended to be proved against him. So tho' in cases of libel the words malicious and seditious be used, the purport or tenor must be set out. And lastly, this rule applicable universally to all cases, is emphatically laid down in same author, page 324, "That in an indictment nothing material shall be taken by intendment or implication;" yet on this record is no specification of the nature of that which is called sedition; all is inference, uncertainty, implication, presumption, and intendment. To administer an oath, not being duly qualified by law, is a misdemeanour, the punishment of which, according to its circumstances, is entrusted to the discretion of the judge; but what the sedition is which should make this a crime worthy of death to warrant the judgment upon the record, is an inference which the judge must take upon himself to draw now, and posterity must enquire in vain.

Indeed the statute explaining the Insurrection Act, 37 Geo. III. which states, that administering an oath to be of any association, brotherhood, society, committee, or confederacy whatsoever, was felony within that law, shews that it was not so before, at least that it was doubtful, and if so, it should be an argument against taking away life, where that explanation was *ex post facto*. Secondly, it was argued, that the statute was expired, and being so, no proceedings could be had under it. 1st Haw. 169. it is laid down, p. 40. sec. 6. if one commit an offence which is made felony by statute, and the statute be repealed, he cannot be punished as a felon in respect of that statute. And 2d Hale 291. where an offence is made felony by statute, and the act repealed, the offences committed before such repeal, and the proceedings are discharged, and cannot be proceeded upon

upon after such repeal, unless a special clause in the act of repeal be made, enabling such proceedings after the repeal for offences committed before the repeal. Hale 309. is to the same point. Now tho' it might be possible enough to draw subtle distinctions between an act expired and an act repealed, yet in substance it is the same. In both cases the law ceases to have any force; and as the penalties in all laws are supposed to warn rather than to revenge, it cannot be good policy to take away the life of a man, when the example can be of no use to deter others, in as much as thereafter there can be no such offence against it. Where, prior to the statute 7 and 8 W. 3. one was convicted of an offence before a commission of Oyer and Terminer, and the King died before judgment, no judgment could afterwards be, because the authority of the judge was determined. How much stronger is it where the law itself is determined?

It only then remained to shew that the act was expired, which it was argued would appear as well from the words of it, as from the circumstances under which it was made.—The concluding clause of it says, that it shall be in force till the 1st day of January, 1797, and to the end of the next session and no longer. Now both these terms were expired, and therefore it was in force no longer. It might be said that the next session meant the next to the first of January 1797, and by the rule of criticism that the relative should belong to the latest antecedent. But however grammarians might consider that rule, it's application would here make nonsense of that which was good sense without it.—For here the intention of the legislature was to make a temporary law of extreme severity, which should last no longer than till they should have an opportunity of meeting again to consider whether it ought to be renewed or not.—The sessions usually began in January or February, therefore by taking the words in the plainest sense, even though it be not the most critical, that is taking *next* to mean *next* to the time of enacting, as next week or next month means the week or month next to the present, the reason of the thing is complete, and the two given periods are satisfied. Whereas the opposite construction is involved in absurdity, for it makes the additional period longer than the original one, and is no less a solecism than it would be to say a day and a year instead of a year and a day. The unusual and unforeseen commencement of last session, would surely not be insisted on as an argument against this. Besides, there is an unvarying mode of expression in all acts of parliament, as well as all legal instruments, when a new period of time is to arise after another before expressed, for then the expletive adverb of time is always interposed, as here it would have been said to the first of January 1797, and to the end of the *then next* session of parliament, or the session

next ensuing *from thence*.—But no such adverb being used here, it is too much to presume, as well against the reasonof the thing, as against the life of the prisoner, that it was intended to be inserted. And the rule of the last antecedent only applies where there are two antecedents in the sentence, to one or other of which it must refer, which is not the case here. And it is used merely in cases of ambiguity, when the sense is equal either way, or perfectly equivocal. But, above all, in this case the great and imperious Law of Mercy steps in, that in all penal laws the construction shall be that which is most favourable. In the slightest misdemeanours this rule prevails, where pecuniary mulcts or temporary deprivation of liberty are the punishments, because if there be a mistake in such cases, it is upon the safest side. How much more should this obtain, where life is the forfeit, for which no future atonement can be made; where, if there be an error, it must ever remain a blot, which neither time nor tears can wash away.

The Attorney General did not think it necessary to make any answer to these arguments, further than by denying that the act was expired; adding, that though it were, there was this difference between a repealed and expired law, that the repeal shewed that the act never should have existed, and implied a censure retrospectively, which the expiration did not.

Both Judges declared their opinions free from the smallest doubt, that no ground whatever had been stated upon either of the points to affect their judgments.—Much indeed had been addressed to the feelings of the Court; in answer to which, Lord Yelverton adverted to a passage in the history of the Roman Commonwealth, where, after the expulsion of the Tarquins, it was attempted by the Partricians to restore Royalty, and the argument made use of was, "that a government by laws was stern and cruel, inasmuch as laws had neither hearts to feel nor ears to hear; whereas a government by Kings was merciful, inasmuch as the sources of humanity and tenderness were open to entreaty."—For his part he was acting under a government by laws, and bound to speak the voice of the law, which had neither feelings nor passions.

Mr. Curran, for the prisoner, now produced to the Court the affidavits of three respective jurors in the cause, in order to shew that a most fatal injustice would be done in pronouncing sentence of death; and that where the proceedings had been such as appeared by these affidavits, a new trial should be had, lest a verdict so obtained might disgrace the administration of the law, and produce consequences the very reverse of those which were sought to be produced by examples of this terrible and awful kind.—Mr. Curran had gone the length of stating

the

the fact of the drunkenness of the jury, and the threats used by some of them, and would have stated the affidavits fully, but was interrupted by the Court before he had gone through them, upon the ground of indelicacy towards the jury.

It was on this occasion that Mr. Curran made a display of touching eloquence, which has been seldom equalled. He drew an affecting picture of the situation of his client, where the mere announcing the truth might pull down resentment upon him from that quarter where resentment would be certain death, and whilst the dagger was in his heart, the very groans which he should utter, or the blood which might issue from his wounds, might be used as a justification of the poinard.—He knew the terrible reply to which he was subjecting his client.—He knew how easy it was for those who wished to crush him, to set their foot upon his neck and extinguish him and his complaints forever.—But the truth was, the case upon which he was instructed to insist—the truth was the case upon which only the prisoner had chosen to commit his destiny.

Mr. Attorney General, with some warmth expressed his astonishment at the mention of a new trial in a capital case—The prisoner's counsel were ready to produce authorities. *—The Attorney General said, if there was any ground to attach the jury, that the council might move upon it—Mr. Curran thereupon moved, that the jury be attached, but was stopped by the Court as before-mentioned; who observed, that however proper such application might be to a higher power, they could not sit to hear it now in Court, and the prisoner was remanded to goal.

In the affidavits alluded to by the Counsel, two of the jurors swore, that whiskey was conveyed into the jury-room thro' the window, and the greater part of the jury were made drunk by it, even to vomiting—one of them deposed, that by reason of his age and infirmity, and being also threatened and intimidated by one of his fellows (James M'Naghton) he was induced to concur in the verdict of Guilty contrary to his opinion.—A third juror made affidavit, that he was induced by the representations of some of his fellows to believe, that should they return a verdict of Guilty, Mr. Orr would not be made to suffer death, else he would not have agreed to find the verdict they did.

When the prisoner was put to the bar to receive sentence of death, the recommendation of the jury having produced no effect, the Court was crowded with spectators, in whose countenances were impressed that public feeling which his fate had occasioned. Lord Yelverton addressed him in a voice so low as scarcely to be distinguishable, and on pronouncing the words, "you are to be taken to the place from whence you came, from thence

* 2 Strange 968, 1 Burrow 394.

thence to the common place of execution, the gallows, there to be hung by the neck until you are dead,"—the tears burst from his eyes, his head sunk between his hands, and in that attitude he remained for nearly ten minutes, during which time the prisoner eyed him with a kind and compassionate countenance, and as soon as he raised his head, begged leave to say a very few words, which were as follows:——"My Lord, I have been found guilty, but I am innocent—I am no felon; it is worse for the jury who found me so than me—I can forgive them and am not afraid to die; but the witness who swore against me is grossly perjured."—Having said this, he walked from the bar with a firm and undaunted step, and was reconducted under a strong guard to the gaol.*

In the interval of suspence, between the day of pronouncing the sentence and Saturday the 7th of October appointed for the execution, various representations were made to Government (it is supposed) for and against the prisoner, but one in particular on his behalf, by the Rev. George Macartney, D. D. the Magistrate, as appears by the committal, who took Wheatly's examinations against him, and was principally concerned in his prosecution—Who (on the circumstances detailed in the affidavits, of which the following is the substance) procured the depositions upon oath of the two Rev. Gentlemen therein-mentioned, and immediately repaired to Dublin, where he laid them, together with his own affidavit, before his Excellency the Lord Lieutenant, and used every conscientious exertion to prevent the execution from being enforced.

The Rev. James Elder, dissenting minister of the parish of Finvoy in the County of Antrim, stated in his affidavit, that he was, in the month of April 1796, sent for to visit a soldier who appeared to be deranged in his mind, and had attempted to commit suicide—That on going to see him, and after he, together with the Rev. Alexander Montgomery, had prayed by his side for some time, this deponent asked who he was, whence he came, and where he was going?—On which he said, his name was Wheatly, that he came from Maybole in Scotland, and was going to Derry to join his regiment, and that his Colonel's name was Durham; and on being asked the nature of his crimes, he said that he had been guilty of seducing women in Scotland, which he considered as a great crime, and was a great weight upon his mind—That he went out with a party from

* Through the whole of this trial, not only the outside hall, but the interior of the Court, was crowded with armed soldiers, to the exclusion of many of the freeholders; and these soldiers were appointed to act as bailiffs, with fix'd bayonets!—But deeply as the public mind was affected, no disorder took place; and, during the whole scene, the prisoner alone seemed untouched with dismay.

from Londonderry and seized an unstatutable still, under the direction of a revenue Officer; that the party was surrounded by a number of people, who made use of abusive language, on which the party fired on the people, who were in an adjoining field, and that he, Wheatly, ran a man through with his bayonet, which he considered as murder, and which hung heavy on his mind—That the revenue Officer was wounded in the affray, and afterwards sent to gaol, where he died of his wounds; and that he the said Wheatly, *was prevailed upon to swear a false oath against some of the prisoners*, for which he was afraid they would suffer, which also hung heavy on his mind.

This affidavit of Mr. Elder was confirmed by that of the Rev. Alex. Montgomery.

The Rev. George Macartney deposed, That at the spring assizes of 1797, when it was thought the trial of Mr. Orr would be brought on, said Wheatly came to this deponent, and told him, he had something of importance to communicate; and on taking him aside, said, that he had seen a Mr. Elder a few minutes before, who, he was certain, was brought there to invalidate his testimony against Mr. Orr, from a conversation that had passed between him and said Elder; which conversation, this deponent believes, must have been the same alluded to in Mr Elder's affidavit above.

The execution was respited until Tuesday the 10th, and from thence till Saturday the 14th, during which period it was confidently hoped that a pardon would follow.

An intimation having in the mean time come to the prisoner's friends, that provided the leading gentlemen of the county would memorial in his favour, mercy would be shewn; a memorial was drawn up, with the above affidavits annexed, which was signed by many, with several reasons assigned by different memorialists for interfering on his behalf, some representing it as a matter of policy to mitigate the sentence, others speaking of it as a subject of mercy, others as a measure of justice.—During this doubtful period, the following publication appeared in the Belfast News-Letter of the 2d October, 1797:

"WE hear from the best and most respectable authority, that William Orr, now under sentence of death in Carrickfergus, has given under his hand-writing an acknowledgement of his crime and of the justness of his sentence, which he has been induced *thus* publicly to do to ease his conscience, and to acquit the jury, who had been much calumniated on account of the verdict they had returned against him."

Upon this the prisoner wrote the following letter, with which he dispatched his brother to Dublin, and by means of the Rev. Dr. Macartney, it was delivered to the Lord Lieutenant:—

May

"*May it please your Excellency,*

"HAVING received from your Excellency's clemency that respite from death which affords me the opportunity of humbly and sincerely thanking you, I avail myself of the indulgence of pen and paper, and of that goodness which you have already manifested towards me, to contradict a most cruel and injurious publication which has been put into the news papers, stating, that I had confessed myself guilty of the enormous crimes which a perjured and miserable wretch came forward to swear against me.—My Lord, it is not by the confession of crimes, which would render me unfit for society, that I expect to live, it is upon the strength of that innocence which I will boldly maintain with my last breath, which I have already solemnly affirmed in a declaration, which I thought was to have been my last, and which I had directed to be published as my vindication from infamy, ten times more terrible to me than death.—I know, my Lord, that my own unhappy situation, the anguish of a distracted wife, and the mistaken tenderness of an affectionate brother, have been resorted to to procure that confession; and I was given to understand, that my life would have been spared me upon such conditions; I as decidedly refused as I should do now, though your Excellency's pardon was to be the reward.—Judge then, my Lord, of the situation of a man to whom life was offered, upon no other conditions than that of betraying himself by a confession both false and base.

"And lastly, let me make one humble observation to your Excellency, that the evidence should be strong indeed to induce a conviction. That an industrious man, enjoying both comfort and competence, who has lived all his life in one neighbourhood, whose character, as well as that of all his stock, has been free from reproach of any kind; who certainly if allowed to say so much for himself, would not shed the blood of any human creature, who is a husband and the father of a family, would engage himself with a common soldier in any system which had for it's end robbery, murder, and destruction, for such was the evidence of the unfortunate witness Wheatly.—— If upon these grounds, and the facts already submitted to your Excellency, I am to be pardoned, I shall not fail to entertain the most dutiful sense of gratitude for that act of justice as well as mercy, and in the mean time

I beg to remain your Excellency's

Carrickfergus Gaol, Most obedient and humble servant,

Oct. 10, 1797. *WILLIAM ORR.*"

It was about this time that the prisoner's wife wrote a letter to Lady Camden, of which the rough draft has accidentally fallen into the Reporter's hands, which as far and as nearly as it can be made out, being in some few places interlined and scarcely legible, is in these words: *To*

" *To Her Excellency the Countess of* CAMDEN.

" GRIEF like mine admits of no apology,—despair and sorrow are my only companions, yet hope bids me look up to you for happiness—A miserable object, a mother and a wife, comes praying for mercy to the father of her children.———

"Pardon, most gracious Lady, the phrenzy of a distracted woman, and listen to the petition of the miserable wife of the unfortunate William Orr.—I come a suppliant, a low and humble slave of misery, praying your Ladyship's intercession on behalf of the life of my husband, whose existence is dearer to me than my own.—Oh! hear my complaint, and grant me one beam of hope to frantic imagination—You are the only person who has it in her power to remove never ending misery from a wretched individual, to chear the afflicted heart, to give comfort and consolation to her that was ready to perish.—Suffer me to assure you, that he is innocent of the crime for which he is under sentence of death—Oh cruel sentence! that will, without your interference, tear from me my husband, and rob my five poor little unoffending children of their father; the best of fathers, the kindest and dearest that ever lived—They join in solicitations for his life; their innocent, fervent, grateful prayers will rise as a memorial before the throne of God; their lisping tongues shall be taught, with unceasing gratitude, to bless and adore the noble, generous, exalted character of their benefactress, the rever'd and loved Countess of Camden, how will that name be imprinted on their very souls, never to be effaced!—Forgive my importunity—the life of my husband, the father of my children's life is at stake—Despair has almost made me mad—I call on you to exert yourself to save his life; thy God will reward thee, thy country thank thee, his children will bless thee, if thou grantest my petition; and when length of years and increase of honour shall make thee tired of earthly joys, and the curtain of death gently close around thy bed, may the angels of God descend and take care that the last ..... human existence shall not receive one rude blast to hasten its extinction—At that awful period, may the recollection of your successful interference, added to the prospect of your future felicity ....."

On the evening preceding the day fixed for the execution, a messenger arrived from the Castle to the High Sheriff. It was considered now as a matter of certainty that he was the messenger of Mercy; but when, on the contrary, it was known that he had brought orders for immediate execution, the effect produced upon the anxious public is much more easily imagined than described.

On Saturday morning, the 14th October, he was brought out from the gaol, in which he had consumed the last year of his ex-

existence; and tho' his complexion was somewhat altered from the glow of health which it formerly wore, the more than ordinary comeliness of his countenance still remained. His stature was fully six feet, his person graceful, but extremely athletic, and of those proportions which indicate the greatest degree of bodily activity and strength, but, above all, there was in his aspect a mixture of firmness and sensibility which seemed to shew him gifted by nature with a generous and elevated spirit. The character he had borne amongst his neighbours confirmed this impression, for he was beloved by all; and in the relations of private life, as a father and a husband, his conduct was amiable and exemplary.

When he understood that he was to be indulged in a post-chaise to convey him to the place of execution, being apprehensive that he might have soldiers for his companions, he seemed more desirous to walk, in order to enjoy the company of the two clergymen, Mr. Stavely and Mr. Hill, whom he had requested to attend him; but these gentlemen being permitted to go with him in the carriage, he arrived at the place of execution about one o'clock, escorted by a very strong military guard, composed of horse, foot, and artillery, detached from different regiments in Belfast and Carrickfergus.—At the place of execution, the infantry were drawn up in a triangular form round the gallows, on the outside of which the cavalry continued to move, whilst at some little distance two field-pieces were planted, ranging with the roads from Carrickfergus and Belfast.—But this precaution was unnecessary, as the public seemed rather to shun the spectacle. A few of his particular friends having asked leave to come within the space for the purpose of carying away his remains, were permitted by the Sheriff. The prisoner, after employing some time in prayer, sung some few verses of the 23d psalm, and seemed to dwell upon the 4th verse:—

"Yea, tho' I walk in Death's dark vale,
"Yet will I fear none ill, &c."

After which he read from the 1st Corinthians, chap. xv. particularly these passages:—

"So when this corruptible shall have put on incorruption, and this mortality shall have put on immortality, then shall be brought to pass the saying, "Death is swallowed up in Victory."
"O Death, where is thy sting?—O Grave, where is thy victory?"

He then addressed all who stood near, as well his friends as the military, officers and privates, who crowded round him, and loudly and ardently declared his innocence, the falsehood of the prosecutor, and also of a news-paper publication, stating that he had acknowledged the justice of his sentence, and confessed his guilt. To guard against future calumnies, when

he should be no longer in this world to contradict them, he had procured a few printed copies of a just and true Declaration, the original of which, in his own writing, he had deposited in the hands of the Reverend John Savage, the clergyman who had attended him in gaol, during that period when he found it necessary to prepare himself for eternity.—He then distributed a considerable number of printed papers, remonstrating calmly with those who seemed eager to snatch away too many, and observing, that by dividing them equally, there would be enough to satisfy the curiosity of all. He then shook hands with his friends, took leave of the two clergymen who attended him, and mounted the scaffold with a firm step; and after the executioner had put the rope about his neck, and when he awaited only the last fatal movement, he gave a preconcerted signal with his handkerchief; and here, for the first time, discovered some appearance of indignation, exclaiming, "I "am no traitor— I am persecuted for a persecuted country.— "Great Jehovah, receive my soul.—I die in the true faith of a "Presbyterian."

A small circumstance worthy of note occurred shortly before his alighting from the carriage.—A poor Catholic, who was his tenant, stood weeping by his side, to whom he stretched out his hat, which he presented to him as a token of friendship and remembrance, and requested his friends to shew kindness to him, for though he was poor he was honest, which was more to be respected than wealth.

The following Letter was written by Orr to his wife:—

Carrickfergus, Saturday Morning.

"*My dear Wife,*

"I now think proper to mention the grounds of my present encouragement, under the apprehension of shortly appearing before my merciful God and Redeemer—My entire innocence of the crime I am charged with—Secondly, A well founded hope of meeting a merciful God—Thirdly, A firm confidence that that God will be a husband to you and a father to your little children, whom I do recommend to his divine care and protection, who has protected me from my mother's womb.—And my last request is, That you will train them up in the knowledge of that religion which is the ground of my present comfort, and the foundation of that happiness, I trust, I shall shortly enjoy, in that day when we must all appear before the Great Judge of Judges and Ruler of all.—Farewell, my dear wife, farewell.

WILLIAM ORR."

The

The dying Declaration of WILLIAM ORR, *of Ferranshane, in the County of Antrim, Farmer.*

TO THE PUBLIC.

" *My Friends and Countrymen,*

" IN the 31th year of my life, I have been sentenced to die upon the gallows, and this sentence has been in pursuance of a verdict of twelve men, who should have been indifferently and impartially chosen ; how far they have been so, I leave to that country from which they have been chosen, to determine ; and how far they have discharged their duty, I leave to their God and to themselves.—They have, in pronouncing their verdict, thought proper to recommend me as an object of human mercy ; in return, I pray to God, as they have erred, to have mercy upon them. The judge, who condemned me, humanely shed tears in uttering my sentence, but whether he did wisely in so highly recommending the wretched informer, who swore away my life, I leave to his own cool reflection, solemnly assuring him and all the world, with my dying breath, that that informer was foresworn. The law under which I suffer, is surely a severe one ; may the makers and promoters of it be justified in the integrity of their motives and the purity of their own lives. By that law I am stamped a felon, but my heart disdains the imputation.—My comfortable lot and industrious course of life best refute the charge of being an adventurer for plunder ; but if to have loved my country, to have known its wrongs, to have felt the injuries of the persecuted Catholics, and have united with them and all other religious persuasions in the most orderly and least sanguinary means of procuring redress :—If those be felonies, I am a felon, but not otherwise. Had my Counsel (for whose honourable exertions I am indebted) prevailed in their motion to have me tried for high treason, rather than under the *insurrection law*, I should have been entitled then to a full defence, and my actions, then would have been better vindicated, but that was refused, and I must now submit to what has passed.

To the generous protection of my country, I leave a beloved wife, who has been constant and true to me, and whose grief for my fate has already nearly occasioned her death. I leave five living children, who have been my delight—may they love their country as I have done, and die for it, if needful.

Lastly, A false and ungenerous publication having appeared in a news-paper, stating certain alledged confessions of guilt on my part, and thus striking at my reputation, which is dearer to me than life, I take this solemn method of contradicting that calumny.—I was applied to by the High Sheriff and the

Rev.

Reverend William Bristow, sovereign of Belfast, to make a confession of guilt, who used entreaties to that effect;—this I peremptorily refused to do: — Did I think myself guilty, I should be free to confess it, but on the contrary, I glory in my innocence.

I trust that all my virtuous countrymen will bear me in their kind remembrance, and continue true and faithful to each other, as I have been to all of them, with this last wish of my heart, nothing doubting of the success of that cause for which I suffer, and hoping for God's merciful forgiveness for such offences as my frail nature may have at any time betrayed me into.—I die in peace and charity with all mankind.

Carrickfergus Gaol, *WILLIAM ORR.*"
Oct. 5th, 1797.

N. B. *The above Declaration was made and read by William Orr, in the presence of the Rev. Mr. Savage.*

As his funeral passed on the following day from Ballymore to Templepatrick, an amazing concourse of people crouded the road and the adjacent hills, a party of dragoons came out under the command of an officer, who said he had orders to disperse them. To this no opposition was made, but it was found impossible to turn back so great and so compacted a crowd, until the procession came to a cross-road, where a great number did return; a greater number however still continued to flock in till they arrived, but without the least tendency to disorder, at the place of interment.—Here, by desire of the officer, who, although strict in the execution of his orders, offered no disrespect to the people, nor received any provocation from them, the friends alone of Mr. Orr proceeded to the burying ground, where he was interred, three dragoons on horse-back being stationed by his grave.

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DEMOLITION OF THE STAR OFFICE.

ON the evening of the day of the execution, some person had desired leave to deposit the form of types, from which the impressions of Mr. Orr's dying declaration had been struck, in the shop of Mr. Matthew Smith of Bridge-street, in the town of Belfast, nephew of the unfortunate Mr. Neilson,* now languishing in a fever in Kilmainham gaol, where he has remained with many others, without trial, for above a year. Mr. Smith had, during the imprisonment of his uncle, interfered in the concerns of the Northern Star, of which that gentleman was a a proprietor, and had in his possession some copies of a hand-bill formerly printed in Dublin, stating to the subscribers the manner in which that paper was destroyed, but which hand-bills, for fear of giving offence, had not been circulated.

Shortly after the types had been so left, Colonel Barber, of the Royal Irish artillery, attended by other officers and a guard of soldiers, entered his shop, and walked directly round the counter to the spot where the types were laid, which he seized upon, afterwards searching through the entire house for a printing-press, respecting which, he had, he said, received an information; but no such thing being in the house, he made use of some expressions of intimidation, and retired carrying off the types and hand-bills above mentioned, of which the following is a copy:—

ON Saturday the 20th inst. at 12 o'clock, about one hundred of the Monaghan militia proceeded from the new barrack, adjoining this town, to the Northern Star office. In the passage leading to it from High-street, they were joined by a large party of the artillery. The two parties entered the office and printing-house, headed by the Sergeant Major of the Monaghan militia, and proceeded to destroy the papers, books, types, presses, &c. beating and severely wounding several of the young men belonging to the office. For about half an hour they continued the work of destruction without the smallest interruption; in the interim the clerks belonging to the office went to General Lake's house to get him to interfere, but he had left town that morning, and the next in command, Colonel Barber, was also gone out of town. Gen. Lake's Aid-de-Camps were then applied to, and refused to take any step in the business; and with

* Mr. Nelson was one of those persons who were so long imprisoned in Fort George, Scotland. — On his enlargement, he came to America, and lately died at New York.

with the same success was the officer of the main-guard applied to, though stationed within less than one hundred yards of the scene of action. The Chief Magistrate was searched for in vain, and three other Magistrates were applied to, but all declined to act. At length Col. Leslie, of the Monaghan militia, was found, and prevailed on to go to the office; but was unable to disperse the military, until he went and brought a guard of the militia, and for a short time cleared the office of these military ruffians. He afterwards requested the friends of the proprietors to go to the office and take care of what property remained; on which five gentlemen went, not only to take care of what property remained, but to take an account of the damage done, that it might be recovered off the barony.—They had not been employed in this business more than ten minutes, when a large party of the artillery, with some sergeants of the militia, returned, armed with hatchets, sledges, &c. forced past the guard, attacked the gentlemen in the office, who narrowly escaped with their lives, and then proceeded to finish the entire destruction of all the property on the premisses, throwing papers, types (after having broke them with sledges) books, &c. out of the windows; nor did the doors and windows escape their fury. About two o'clock they had completed their business, and left the buildings a complete waste.—The property thus destroyed has been estimated, on oath, at 5000l. value.

The only reason for this barbarous outrage is, that an advertisement, purporting to be from the non-commissioned officers and privates of the Monaghan regiment of militia was refused to be inserted in the Northen Star, from its containing a gross calumny on the inhabitants of Belfast, but which was offered to be inserted provided the paragraph containing the calumny was suppressed. But the absence of the two principal officers, and the refusal of every other officer who was applied to, to stop the outrage and the Chief Magistrate being absent, must prove to the world, that a pretence was only wanting, and that the destruction of the paper was the effect of a preconcerted plan. What will throw farther light on the business is, a declaration made by the Sergeant-Major of the Monaghan militia to the young men in the office, when the military first entered it, "Don't blame us, boys, for what we are going to do,—we are only executing the orders of our officers."

The Printers of the paper determined to continue the publication at a neighbouring printing-house, until their own was repaired, expecting that the military vengeance was glutted; but intelligence of this having reached Col. Barber, he went to all the printing-houses in town, and told them, that they might expect to have all their properties destroyed in a similar manner,

and

and that "he could not prevent it." He also went to the Distributor of Stamps, and severely reprimanded him for having given stamped paper to the Printer.

Thus fell the Northern Star in the head quarters of Gen. Lake, who, in his famous proclamation, promised protection to the lives and properties of the inhabitants in his district.—The real cause of its destruction was, its unwearied efforts to unite the people, and to procure a full and fair representation of *all* the Irish people. These were its crimes, and for these were the minions of despotism hunted on to destroy it. The system of military violence is not abandoned—on Monday night the houses of three of the inhabitants, who were obnoxious to these friends of "regular government," were destroyed, and yesterday another house was destroyed, and the furniture commited to the flames, while the wife of the unfortunate owner was in labour, and is now at the point of death.

A person by the name of Dickey, was stabbed and houghed by the military.

There are but two ways of viewing these transactions; either the officers could not, or would not, restrain the soldiery—either way, the money wrung from the hard earnings of the people is bestowed in support of such protectors *.

Belfast, 25th May 1797.

* On Monday, the Monaghan militia also destroyed the house of Mr. Smith.

On Friday the 27th October, Col. Barber called at a ſhop in Belfaſt, and in Gen. Lake's name informed the owner, that he underſtood it was intended to publiſh a pamphlet reſpecting Mr. Orr's trial, to inflame the minds of the lower order of people, and that the wrecking of Mr. Smith's houſe might be an example of what ſhould be done wherever it was found.

THE

TRIAL

OF

PETER FINERTY

FOR

A LIBEL.

COMMISSION OF OYER AND TERMINER.

AT a court of Oyer and Terminer, and general gaol delivery, held for the county of the city of Dublin, before Mr. Justice Downes, on the 22d of December 1797, Peter Finerty was brought to the Bar and tried on an indictment (drawn in the usual form), charging him with being the printer and publisher of the following false, scandalous, and libellous letter, addressed to Earl Cambden.

THE PRESS, Thursday, 26th October 1797.

To his EXCELLENCY *the* LORD LIEUTENANT.

My Lord,

I address your Excellency on a subject as aweful and interesting, as any that hath engaged the feelings of this suffering country. The oppression of an individual leads to the oppression of every member in the state, as his death, however speciously palliated by forms, may lead to the death of the Constitution. Your Lordship already anticipates me; and your conscience has told you, that I allude to the circumstance of Mr. Orr, whose case every man has now made his own, by discovering the principle on which Mr. Pitt sent you to execute his orders in Ireland.

The death of Mr. Orr, the nation has pronounced one of the most sanguinary and savage acts that has disgraced the laws.—In perjury, did you not hear, my Lord, the verdict was given? perjury accompanied with terror, as terror has marked every step of your government. Vengeance and desolation were to fall on those who would not plunge themselves in blood. These

were

were not strong enough; against the express law of the land, not only was drink introduced to the Jury, but drunkenness itself, beastly and criminal drunkenness, was employed to procure the murder of a better man, than anythat now surrounds you—But well may Juries think themselves justified in their drunken verdicts, if debauched and drunken Judges,* swilling spirits on the seat of justice itself, shall set the country so excellent an example.

Repentance, which is a slow virtue, hastened however to declare the innocence of the victim. The mischief which perjury had done, truth now stepped forward to repair; neither was she too late, had humanity formed any part of your counsels. Stung with remorse, on the return of reason, part of his jury solemnly and soberly made oath, that their verdict had been given under the unhappy influence of intimidation and drink; and in the most serious affidavit that ever was made, by acknowledging their crime, endeavoured to atone to God, and to their Country, for the sin into which they had been seduced.

The informer too, a man it must be owned not much famed for veracity, but stung with the like remorse, deposed that all he had formerly sworn was malicious and untrue, and that from compunction alone he was induced to make a full disclosure of his great and enormous guilt. In this confession the wicked man had no temptation to perjury; he was not to be paid for that; he had not in view, like another Judas, the "thirty pieces of silver," if he was to receive a reward, he knew he must not look for it in this world.

Those testimonies were followed by the solemn declaration of the dying man himself; and the approach of death is not a moment when men are given to deceive both themselves and the world. Good and religious men are not apt, by perjury on their death beds, to close the gates of Heaven against themselves, like those who have no hope. But if these solemn declarations do not deserve regard, then is there no truth in justice; and though the innocence of the accused had even remained doubtful, it was your duty, my Lord, and you had no exemption from that duty, to have interposed your arm, and saved him from the death that perjury, drunkenness, and reward had prepared him.

Let not the nation be told that you are a passive instrument in the hands of others—if passive you be, then is your office a shadow indeed—if an active instrument, as you ought to be, you did not perform the duty which the laws required of you—you did not exercise the prerogative of mercy—that mercy which the Constitution had entrusted to you for the safety of the subject, by guarding him from the oppression of wicked men. Innocent it appears he was; his blood has been shed; and the precedent indeed is awful. Had

* Alluding to Mr. Juſtice ——.

Had Frazier and Ross been found guilty of the murder committed on a harmless and industrious peasant—lay your hand to your heart, my Lord, and answer without advisers, would you not have pardoned those ruffians? After the proof you have given of your mercy, I must suppose your clemency unbounded. Have no *Orange-men*, * convicted on the purest evidence, been at any time pardoned? Is not *their* oath of blood connived at? was not that oath manufactured at the command of Power! and does not power itself discipline those brigands? But suppose the evidence of Wheatly had been true, what was the offence of Mr. Orr? not that he had taken an oath of blood and extermination—for then he had not suffered—but that he had taken an oath of charity and of union, of humanity and of peace. He has suffered; shall we then be told, that your government will conciliate public opinion, or that the people will not continue to look for a better?

Was the unhappy man respited but to torture him, to insult both justice and the nation, to carry the persecution into the bosom of his wife and children? Is this the prerogative of mercy? What would your father have said unto you, had he lived to witness this falling-off—"Son," he would have said, "I am a father, I have a daughter; I have known misfortune—the world has pitied me, and I am not ungrateful."

Let us explore the causes of this sanguinary destruction of the people. Is it that you are determined to revenge the regret expressed by them at the recall of your predecessor; and well knowing they will not shed tears at the departure of his successor, that you are resolved to make them weep during your stay? Yes, my Lord, I repeat during your stay, for it may not be necessary that a Royal Yacht, manned and decorated for the purpose, should waft you from the shores of an angered and insulted country.

Another cause—Is it to be wondered that a successor of Lord Fitzwilliam should sign the death warrant of Mr. Orr?—Mr. Pitt had learned, that a merciful Lord Lieutenant was unsuited to

* The *Orange-men* are a set of people who formed themselves into armed bodies in direct opposition to the *United Men*. These latter were composed of men of all persuasions, who professed to unite for the general freedom of Ireland (see Mr. Rowan's trial)—The former are mostly of the established Church, many of them the retainers or expectants of Court patronage; they avow a warm attachment to what is called *The Protestant Ascendency*, and the English system of governing the country; they mount the Orange cockade as the symbol of their Faith and Loyalty; and are much more inveterate against their unfortunate countrymen, than even the English or Scotch soldiery.

Such, American reader, are the purposes to which the mild and peaceful religion of the meek and lowly Jesus is perverted by political men, when they contrive to make it a *State engine*—they turn it to strife, hatred, oppression, persecution, and death!

to a government of violence. It was no compliment to the native clemency of a Camden, that he sent you into Ireland ; and what has been our portion under the change, but massacre and rape, military murders, desolation and terror?

Had you spared Mr. Orr, you thought, perhaps, the numerous families of those whom your administration had devoted, might accuse you of partiality ; and thus to prove your consistency, you are content to be suspected of wanting the only quality this country wishes you to exercise.

But, my Lord, it will not do ; though your guards and your soldiers, and your thousands, and your tens of thousands, should conduct innocence to death—it will not do. A voice has cried in the wilderness ; and let the deserted streets of Carrickfergus proclaim to all the world, that good men will not be intimidated, and that they are yet more numerous than your soldiers.

We are not Domitian's people ; we are not lopped at a blow, but it looks as if some fate had doomed us to be destroyed one by one, as the Persian tyrant ordered the hairs to be plucked from the tail of his beast. Beasts we have been, the vile carriers of the vilest burthens, that the vilest masters could lay upon upon us. But the yoke is shaken, persecution has provoked to love, and united Ireland against foreign despotism.

Feasting in your castle, in the midst of your myrmidons and bishops, you have little concerned yourself about the expelled and miserable cottager, whose dwelling, at the moment of your mirth, was in flames, his wife and his daughter then under the violation of some commissoned ravager, his son agonizing on the bayonet, and his helpless infants crying in vain for mercy. These are lamentations that stain not the hour of carousal.—Under intoxicated counsels, the Constitution has reeled to its centre; justice herself is not only blind-drunk, but deaf, like Festus, " to the words of soberness and truth."

My Lord, the people of Ireland did hope, that mercy would not have been denied to a most worthy and innocent man, when they understood that one of the worst advisers, and most imperious members of your cabinet, had abandoned the kingdom. Had he been of your late counsels, the odium might have been divided ; at persent you have the best claim to it. Let, however, the awful execution of Mr. Orr be a lesson to all unthinking juries ; and let them cease to flatter themselves that the soberest recommendation of theirs, and of the presiding Judge, can stop the course of carnage, which sanguinary, and I do not fear to say, unconstitutional laws, have ordered to be loosed ; let them remember, that, like Macbeth, the servants of the Crown have waded so far in blood, that they find it easier to go on than to go back.

MARCUS.

The *Attorney General*, in ſtating the caſe on behalf of the Government, obſerved, that he had been directed by the Executive to proſecute the traverſer for printing a moſt malicious, falſe, and ſcandalous libel on the government of the country; that it was a libel upon the adminiſtration of the juſtice of the country, a libel that rendered the judges in the adminiſtration of juſtice odious and contemptible in the eyes of the people—This (he ſaid) was the conſequence intended to be produced, and for which this libel has been publiſhed, a purpoſe that muſt tend to the total deſtruction of government and "ſocial order."—When reſpect for the adminiſtration of juſtice in any country is gone, every thing is loſt; our lives, our property are in danger—"No man, who has read that paper called THE PRESS, that ſhall deliberate on the ſeries of papers that have been publiſhed in it, but muſt ſay it was calculated to run down the adminiſtration of juſtice in this country; a ſyſtematic determination to diſgrace the juſtice of the country in the eyes of the people; to make the lower orders of the people, who were ever and anon clamorous to riſe againſt the State, and to make them believe that juſtice and law are curbed in the adminiſtration of them, and that they cannot have impartial juſtice done them."——He further obſerved to the jury, that in the diſcharge of that ſacred truſt which was repoſed in them, they were to defend the Liberty of the Preſs, and, in ſo doing, they would preſerve the freedom of life and property—That the law had made it neceſſary, in order to preſerve the liberty of the preſs, to reſtrain its licentiouſneſs; and that the liberty of the preſs could never be deſtroyed but by its licentiouſneſs.—Mr. Attorney then concluded, by reading the opinion of Mr. Juſtice Buller in the caſe of the King againſt Watſon, 2 Term Rep. 235.

EVIDENCE *on the part of the* CROWN

The witneſſes on behalf of Government being ſworn and examined, proved that the traverſer was the editor of the paper called THE PRESS, in one of the numbers of which the letter ſigned MARCUS had been inſerted.

Mr. *Fletcher* then conciſely ſtated the caſe on behalf of the traverſer; he called the attention of the jury to the celebrated letter of Junius to the King, part of which he read—The printer of that letter (ſaid he) was proſecuted for publiſhing it, and an Engliſh Jury would only find him guilty of the fact of *publiſhing*, but they would not convict him of having publiſhed it with a ſeditious or malicious intent.

Mr. Fletcher then obſerved upon the abuſe which had been given to the character of Lord Moira, in the papers of this Country, to an offspring of the ſoil of Ireland; had he not bled in the cauſe of England and Ireland?—Is the freedom of the preſs to conſiſt merely in panegyriſing the meaſures of the go-

vern-

vernment, let them be right or wrong?—If that be the freedom of the preſs, he had no idea of ſuch a liberty of the preſs—That is not the liberty of the preſs which put down ſhip-money; that is not the liberty of the preſs which produced the Revolution; that is not the liberty of the preſs which brought the preſent King to the throne—In the caſe of the diſpenſing powers, what do the ſeven Biſhops not to owe to the liberty of the preſs?—That was the liberty of the preſs which forced the Houſe of Stuart from the throne—He conjured the jury to weigh well the intention of the traverſer, and if, after the evidence that ſhould be adduced, they ſhould be of opinion he did publiſh thoſe facts (moſt of which Lord Moira had offered to verify at the bar of the Engliſh Houſe of Lords) falſely, and with the malicious and ſeditious purpoſe laid in the indictment, that then and in that caſe only, could they be warranted to find the traverſer guilty.

EVIDENCE *for the* TRAVERSER.

Lord Yelverton depoſed, that the recommendation of the jury in favor of Mr. Orr had been forwarded by him, and was received at the Caſtle; and that Mr. Orr had been reſpited three times.

The Counſel for the traverſer then attempted to introduce evidence to prove the truth of the matter contained in the publication; and alſo to rebut the inſinuations of the Attorney General as to there being a ſyſtematic determination to diſgrace the adminiſtration; they offered to prove that THE PRESS was then the only paper printed in the City of Dublin not in the pay of Government; but were prevented by the Court.

The evidence being cloſed, Mr. CURRAN addreſſed the Court and Jury on the part of the traverſer.

Never, ſaid he, did I feel myſelf ſo ſunk under the importance of any cauſe; to ſpeak to a queſtion of this kind at any time, would require the greateſt talent and the moſt matured deliberation; but to be obliged without either of theſe advantages, to ſpeak to a queſtion that hath ſo deeply ſhaken the feelings of this already irritated and agitated nation, is a taſk that fills me with embarraſſment and diſmay. Neither my learned Colleague or myſelf received any inſtructions or licenſe until after the jury were actually ſworn, and we both of us came here, under an idea that we ſhould not take any part in the trial. This circumſtance I mention not as an idle apology for an effort, that cannot be the ſubject of either praiſe or cenſure, but as a call upon you, gentlemen of the jury, to ſupply the defects of my efforts, by a double exertion of your attention.

Perhaps I ought to regret that I cannot begin with any compliment, that may recommend me or my client perſonally to your favour. A more artful advocate would probably begin his ad-

address to you by compliments on your patriotism, and by felicitating his client upon the happy selection of his Jury, and upon that unsuspected impartiality in which, if he was innocent, he must be safe. You must be conscious gentlemen, that such idle verbiage, as that, could not convey either my sentiments or my client's upon that subject. You know, and we know, upon what occasion you are come, and by whom you have been chosen; you are come to try an accusation, professedly brought forward by the State, chosen by a Sheriff who is appointed by our accuser.

[Here Mr. Attorney General said the Sheriff was elected by the city, and that that observation was therefore unfounded.]

Be it so—I will not now stop to enquire whose property the city may be considered to be, but the learned gentleman seems to forget, that the election by that city, to whomsoever it may belong, is absolutely void without the approbation of that very Lord Lieutenant * who is the prosecutor in this case. I do therefore repeat, gentlemen, that not a man of you has been called to that box by the voice of my client; that he has had no power to object to a single man among you, though the Crown has, and, that you yourselves must feel under what influence you are chosen, or for what qualifications you are particulary selected. At a moment when this wretched land is shaken to its centre by the dreadful conflicts of the different branches of the community; between those who call themselves the partizans of liberty, and those that call themselves the parzans of power; between the advocates of infliction, and the advocates of suffering; upon such a question as the present, and at such a season, can any man be at a loss to guess from what class of character and opinion, a friend to either party would resort for that jury which was to decide between them both. I trust, gentlemen, you know me too well to suppose that I could be capable of treating you with any personal disrespect; I am speaking to you in the honest confidence of your fellow citizen. When I allude so those unworthy imputations of supposed bias, or passion or partiality, that may have marked you out for your present situation, I do so in order to warn you of the ground on which you stand, of the point of awful responsibility in which you are placed, to your conscience and to your country; and to remind you, that if you have been put into that box from any unworthy reliance on your complaisance or your servility, you have it in your power, before you leave it, to refute and to punish so vile an expectation by the integrity of your verdict; to remind

* The Corporation of Dublin then was, now is, and will be under the influence of Government, who always contrives to have a variety of snug employments, profitable contracts, &c. for the leading members — The great fish being gratified, the small fry keep open mouth'd to be fed also.

mind you, that you have it in your power to shew to as many Irishmen as yet linger in their country, that all law and justice have not taken their flight with our prosperity and our peace; that the sanctity of an oath and the honesty of a Juror are not yet dead amongst us; and that if our Courts of justice are superseded by so many strange and terrible tribunals, * it is not because they are deficient either in wisdom or virtue.

Gentlemen, it is necessary that you should have a clear idea first of the law, by which this question is to be decided, secondly of the nature and object of the prosecution. As to the first, it is my duty to inform you, that the law respecting libels has been much changed of late.—Heretofore, in consequence of some decisions of the Judges in Westminster-hall, the Jury was conceived to have no province but that of finding the truth of the inuendoes and the fact of publication; but the libellous nature of that publication, as well as the guilt or innocence of the publication, were considered as exclusively belonging to the Court. In a system like that of law, which reasons logically, no one erroneous principle can be introduced, without producing every other that can be deducible from it. If in the premises of any argument you admit one erroneous proposition, nothing but bad reasoning can save the conclusion from falsehood. So it has been with this encroachment of the Court upon the province of the Jury with respect to libels. The moment the Court assumed as a principle, that they, the Court, were to decide upon every thing but the publication; that is, they were to decide upon the question of libel or no libel, and upon the guilt or innocence of the intention, which must form the essence of every crime, the guilt or innocence must of necessity have ceased to be material. You see, gentlemen, clearly that the question of intention is a mere question of fact. Now the moment the Court determined that the jury was not to try that question, it followed of necessity that it was not tried at all; for the Court cannot try a question of fact. When the Court said that it was not triable, there was no way of fortifying that extraordinary proposition, except by asserting that it was not material. The same erroneous reasoning carried them another step, still more mischievous and unjust: if the intention had been material, it must have been decided upon as a mere fact under all its circumstances. Of these circumstances the meanest understanding can see, that the leading one must be the truth or falsehood of the publication; but having decided the intention to be immaterial, it followed that the truth must be equally immaterial—and under the law so distorted, any man in England who published the most undeniable truth, and with the purest intention, might be punished for a crime in the most ignominious manner, without

* Alluding to the number of Courts Martial—Martial Law had taken place of all other law.

out imposing on the prosecutor the necessity of proving his guilt, or getting any opportunity of shewing his innocence.

I am not in the habit of speaking of legal institutions with disrespect; but I am warranted in condemning that usurpation upon the rights of juries, by the authority of that statute, by which your jurisdiction is restored. For that restitution of justice, the British subject is indebted to the splendid exertions of Mr. *Fox* and Mr. *Erskine*,—those distinguished supporters of the Constitution and of the Law; and I am happy to say to you, that though we can claim no share in the glory they have so justly acquired, we have the full benefit of their success; for you are now sitting under a similar act passed in this country, which makes it your duty and your right to decide upon the entire question, upon its broadest grounds, and under all its circumstances, and of course to determine, by your verdict, whether this publication be a false and scandalous libel: false in fact, and published with the seditious purpose alledged of bringing the Government into scandal, and instigating the people to insurrection.

Having stated to you, gentlemen, the great and exclusive extent of your jurisdiction, I shall beg leave to suggest to you a distinction that will strike you at first sight; and that is the distinction between public animadversions upon the character of private individuals, and those which are written upon measures of government, and the persons who conduct them. The former may be called *personal*, and the latter *political* publications. No two things can be more different in their nature, nor in the point of view in which they are to be looked on by a jury. The criminality of a mere personal libel consists in this, that it tends to a breach of the peace; it tends to all the vindictive paroxysms of exasperated vanity, or to the deeper and more deadly vengeance of irritated pride. — The truth is, few men see at once that they cannot be hurt so much as they think by the mere battery of a news-paper. They do not reflect that every character has a natural station, from which it cannot be effectually degraded, and beyond which it cannot be raised by the bawlings of a news-hawker. If it is wantonly aspersed, it is but for a season, and that a short one, when it emerges, like the Moon, from behind a passing cloud to its original brightness. It is right, however, that the Law, and that *you* should hold the strictest hand over this kind of public animadversion, that forces humility and innocence from their retreat into the glare of public view—that wounds and terrifies; that destroys the cordiality and peace of domestic life; and that without eradicating a single vice, or a single folly, plants a thousand thorns in the human heart *. In

* Here is a most important admonition, beautifully expressed—Every Printer, in every country, ought to impress it on his mind, and add to his morning and evening prayer, the GOLDEN RULE, "to do unto others as he would that they should do unto him."

In cases of that kind, I perfectly agree with the law as stated from the Bench; in such cases I hesitate not to think, that the truth of a charge ought not to justify its publication. If a private man is charged with a crime, he ought to be prosecuted in a court of justice, where he may be punished if it is true, and the accuser if it is false; but far differently do I deem of the freedom of political publication. The salutary restraint of the former species, which I talked of, is found in the general law of all societies whatever; but the more enlarged freedom of the Press, for which I contend in political publication, I conceive to be founded in the peculiar nature of the British Constitution, and to follow directly from the contract on which the British Government hath been placed by the Revolution. By the British Constitution, the power of the State is a trust, committed by the People, upon certain conditions; by the violation of which it may be abdicated by those who hold, and resumed by those who conferred it. The real security therefore of the British Sceptre is, the sentiment and opinion of the PEOPLE, and it is consequently *their* duty to observe the conduct of the Government; and it is the privilege of every man, to give them full and just information upon that important subject. Hence the Liberty of the Press is inseparably twined with the Liberty of the People. The Press is the great public Monitor; its duty is that of the historian and the witness, that "*Nil falsi audeat, nil veri non audeat dicere,*" that its horizon shall extend to the farthest verge and limit of truth; that beyond that limit it shall not dare to pass; that it shall speak truth to the King in the hearing of the People, and to the People in the hearing of the King; that it shall not perplex either the one or the other with false alarm, lest it lose its character for veracity, and become an unheeded warner of real danger; lest it should vainly warn them of that sin, of which the inevitable consequence is death. This, gentlemen, is the great privilege upon which you are to decide; and I have detained you the longer, because of the late change of the law, and because of some observations that have been made, which I shall find it necessary to compare with the principles I have now laid down.

And now, gentlemen, let us come to the immediate subject of the trial, as it is brought before you by the charge in the indictment, to which it ought to have been confined; and also, as it is presented to you by the statement of the learned counsel who has taken a much wider range, than the mere limits of the accusation, and has endeavoured to force upon your consideration, extraneous and irrelevant facts, for reasons which it is my duty to explain. The indictment states simply, that Mr. Finerty has published a false and scandalous libel, upon the Lord Lieutenant of Ireland, tending to bring his government into disrepute, and to alienate the affections of the people; and

one would have expecteed, that without stating any other matter, the Counsel for the Crown would have gone directly to the proof of this allegation; but he has not done so; he has gone to a most extraordinary length indeed, of preliminary observation, and an allusion to facts, and sometimes an assertion of facts, at which I own I was astonished, until I saw the drift of these allusions and assertions. Whether you have been fairly dealt with by him, or are now honestly dealt with by me, you must be judges. He has been pleased to say, that this prosecution is brought against this letter signed Marcus, merely as a part of what he calls a system of attack upon Government, by the paper called the PRESS. As to this, I will only ask you, whether you are fairly dealt with? Whether it is fair treatment to men upon their oaths, to insinuate to them, that the general character of a news-paper (and that general character founded merely upon the assertion of the prosecutor) is to have any influence upon their minds, when they are to judge of a particular publication? I will only ask you, what men you must be supposed to be, when it is thought that even in a court of justice, and with the eyes of the nation upon you, you can be the dupes of that trite and explodedexpedient, so scandalous of late, in this country, of raising a vulgar and mercenary cry against whatever man or whatever principle it is thought necessary to put down; and I shall therefore merely leave it to your own pride to suggest, upon what foundation it could be hoped, that a senseless clamour of that kind could be echoed back by the yell of a jury upon their oaths.—I trust, you see that this has nothing to do with the question.

Gentlemen of the jury, other matters have been mentioned, which I must repeat for the same purpose; that of shewing you, that they have nothing to do with the question. The learned Counsel has been pleased to say, that he comes forward in this prosecution as the real advocate for the Liberty of the Press, and to protect a mild and merciful Government from its licentiousnes; and he has been pleased to add, that the Constitution can never be lost while its freedom remains, and that its licentiousness alone can destroy that freedom. As to that, gentlemen, he might as well have said, that there is only one mortal disease of which a man can die; I can die the death inflicted by tyranny; and when he comes forward to extinguish this paper in the ruin of the Printer by a State prosecution, in order to prevent its dying of licentiousness, you must judge how candidly he is treating you, both in the fact and in the reasoning. Is it in Ireland, gentlemen, that we are told licentiousness is the only disease that can be mortal to the Press? Has he heard of nothing else that has been fatal to the freedom of publication? I know not whether the Printer of the Northern Star may have heard of such things in his captivity, but I know that his wife

wife and children are well apprized that a Press may be destroyed in the open day, not by its own licentiousness, but by the licentiousness of a military force. *—As to the sincerity of the declaration that the State has prosecuted in order to assert the freedom of the Press, it starts a train of thought, of melancholy retrospect and direful prospect, to which I did not think the learned Counsel would have wished to commit your minds.—It leads you naturally to reflect at what times, from what motives, and with what consequences the Government has displayed its patriotism, by these sorts of prosecutions. As to the motives, does History give you a single instance in which the State has been provoked to these conflicts, except by the fear of truth, and by the love of vengeance?—Have you ever seen the rulers of any country bring forward a prosecution from motives of filial piety, for libels upon their departed ancestors?—Do you read that Elizabeth directed any of those State prosecutions against the libels, which the Divines of her times had written against her Catholic sister; or against the other libels which the same gentlemen had written against her Protestant father? No, gentlemen, we read of no such thing; but we know she did bring forward a prosecution from motives of personal resentment, and we know that a Jury was found time-serving and mean enough to give a verdict, which she was ashamed to carry into effect!

I said the learned Counsel drew you back to the times that have been marked by these miserable conflicts. I see you turn your thoughts to the reign of the second James. I see you turn your eyes to those pages of governmental abandonment, of popular degradation, of expiring liberty, of merciless and sanguinary persecution; to that miserable period, in which the fallen and abject state of man might have been almost an argument in the mouth of the Athiest and Blasphemer against the existence of an all just and an all wise first cause; if the glorious æra of the Revolution that followed it, had not refuted the impious inference, by shewing that if man descends, it is not in his own proper motion; that it is with labour and with pain, and that he can continue to sink only until by the force and pressure of the descent, the spring of his immortal faculties acquires that recuperative energy and effort that hurries him as many miles aloft—he sinks but to rise again. It is at that period that the State seeks for shelter in the destruction of the Press; it is in a period like that, that the Tyrant prepares for the attack upon the people, by destroying the liberty of the Press; by taking away that shield of wisdom and of virtue, behind which the people are invulnerable, in whose pure and polished convex, ere the lifted blow has fallen, he beholds his own image, and is turned into stone. It is at those periods that the hon-

* See page 140.

honest man dares not speak, because truth is too dreadful to be told; it is then humanity has no ears, because humanity has no tongue. It is then the proud man scorns to speak, but like a Physician baffled by the wayward excesses of a dying patient, retires indignantly from the bed of an unhappy wretch, whose ear is too fastidious to bear the sound of wholesome advice, whose palate is too debauched to bear the salutary bitter of the medicine that might redeem him; and therefore leaves him to the felonious piety of the slaves that talk to him of life, and strip him before he is cold.

I do not care, gentlemen, to exhaust too much of your attention, by following this subject through the last century with much minuteness; but the facts are too recent in your mind not to shew you, that the Liberty of the Press, and the Liberty of the People, sink and rise together; and that the liberty of speaking, and the liberty of acting, have shared exactly the same fate. You must have observed in England that their fate has been the same in the successive vicissitudes of their late depression; and sorry I am to add, that this country has exhibited a melancholy proof of their inseparable destiny, through the various and further stages of deterioration down to the period of their final extinction; when the Constitution has given place to the Sword, and the only Printer in Ireland, who dares to speak for the People, is now in the dock.

Gentlemen, the learned Counsel has made the real subject of this prosecution so small a part of his statement, and has led you into so wide a range, certainly as unnecessary to the object, as inapplicable to the subject of this prosecution; that I trust you will think me excusable in somewhat following his example.—Glad am I to find that I have the authority of the same example, for coming at last to the subject of this trial. I agree with the learned Counsel, that the charge made against the Lord Lieutenant of Ireland, is that of having grossly and inhumanly abused the royal prerogative of mercy, of which the King is only the trustee for the benefit of the People. The facts are not controverted. It has been asserted that their truth or falsehood is indifferent, and they are shortly these, as they appear in this publication.

William Orr was indicted for having administered the oath of an *United Irishman*. Every man now knows what that oath is; that it is simply an engagement first to promote a brotherhood of affection among men of all religious distinctions; secondly to labour for the attainment of a Parliamentary Reform; and thirdly an obligation of secrecy, which was added to it when the Convention Law made it criminal and punishable to meet by any public delegation for that purpose. After remaining upwards of a year in gaol, Mr. Orr was brought to his trial; was prosecuted by the State; was sworn against by a com-

common informer by the name of Wheatly, who himself had taken the obligation, and was convicted under the Insurrection Act, which makes the administering such an obligation felony of death —The Jury recommended Mr. Orr to mercy; the Judge, with an humanity becoming his character, transmitted the recommendation to the noble prosecutor in this case. Three of the Jurors made solemn affidavit in Court, that liquor had been conveyed into their box;* that they were brutally threatened by some of their fellow-jurors with capital prosecution if they did not find the prisoner guilty; and that under the impression of those threats, and worn down by watching and intoxication, they had given a verdict of guilty against him, though they believed him in their conscience to be innocent. That further enquiries were made, which ended in a discovery of the infamous life and character of the informer; that a respite was therefore sent once, and twice, and thrice, to give time, as Mr. Attorney General has stated, for his Excellency to consider whether mercy *could be* extended to him or not; and that, with a knowledge of all these circumstances, his Excellency did finally determine that mercy *should not be* extended to him, and that he was accordingly executed upon that verdict. Of this publication, which the indictment charges to be false and seditious, Mr. Attorney General is pleased to say, that the design of it is to bring the Courts of Justice into contempt.—As to this point of fact, gentlemen, I beg to set you right.

To the administration of Justice, so far as it relates to the Judges, this publication has not even an allusion in any part mentioned in this indictment: It relates to a department of justice, that cannot begin until the duty of the Judge is closed. Sorry should I be, that with respect to this unfortunate man, any censure should be flung on those Judges who presided at this trial, with the mildness and temper that became them, upon so awful an occasion as the trial of life and death. Sure am I, that if they had been charged with inhumanity, or injustice, and if they had condescended at all to prosecute the reviler, they would not have come forward in the face of the public to say, as has been said this day, that it was immaterial whether the charge was true or not. Sure I am, their first object would have been to shew that it was false, and ready should I have been an eye witness of the fact, to have discharged the debt of ancient friendship, of private respect, and of public duty, and upon my oath, to have repelled the falsehood of such an imputation. Upon this subject, gentlemen, the presence of those venerable Judges restrains what I might otherwise have said, nor should I have named them at all, if I had not been forced to do so, and merely to undeceive you if you have been made to believe their characters to have any community of cause whatever

* See page 124.

er with the Lord Lieutenant of Ireland. To *him* alone it is confined, and against *him* the charge is made, as strongly I suppose as the writer could find words to express it, " that the Viceroy of Ireland has cruelly abused the prerogative of Royal mercy, in suffering a man under such circumstances to perish like a common malefactor."—For this Mr. Attorney General calls for your conviction as a false and scandalous libel, and after stating himself every fact that I have repeated to you, either from his statement or from the evidence, he tells you that you ought to find it false, though he almost in words admits that it is not false, and has resisted the admission of the evidence by which we offered to prove every word of it to be true.

And here, gentlemen, give me leave to remind you of the parties before you. The traverser is a printer, who follows that profession for bread, and who at a time of great public misery and terror, when the people are restrained by law from debating under any delegated form; when the few constituents that we have are prevented by force from meeting in their own persons, to deliberate or to petition; when every other news-paper in Ireland is put down by force, or purchased by the Administration (though here, gentlemen, perhaps I ought to beg your pardon for stating without authority—I recollect when we attempted to examine as to the number of news-papers in the pay of the Castle,* that the evidence was objected to)—at a season like this, Mr. Finerty has had the courage, perhaps the folly, to print the publication in question, from no motive under Heaven of malice or vengeance, but in the mere duty which he owes to his family and to the public. His prosecutor is the King's Minister in Ireland; in that character does the learned gentlemen mean to say, that his conduct is not a fair subject of public observation? Where does he find his authority for that, in the law or practice of the sister country? Have the virtues, or the exalted station, or the general love of his people preserved the sacred person, even of the Royal Master of the prosecutor, from the asperity and the intemperance of public censure, unfounded as it ever must be, with any personal respect to his Majesty, justice, or truth? Have the gigantic abilities of Mr Pitt, have the more gigantic talents of his great antagonist, Mr. Fox, protected either of them from the insolent familiarity, and, for aught I know, the injustice with which writers have treated them? What latitude of invective has the King's Minister

* Since the memorable days of *Peter Porcupine* †, the American reader will not be very much surprized to hear, that, in England, many of the News-papers are in the pay of Government; and that the Attorney General keeps a strict watch over all those that are not—Latterly, in Ireland, those papers that could not be bought, were beaten down by the bayonet.

† This famous Diplomatic agent now flourishes under the sign of the *Crown and Mitre* in Pall-mall near to St. James's palace.——It is believed that *Peter* has left behind him in this country, certain persons who are assiduously labouring in the same vocation.

ster escaped, upon the subject of the present war? Is there an epithet of contumely or of reproach, that hatred or that fancy could suggest, that are not publicly lavished upon him? Do you not find the words, "advocate of despotism—robber of the public treasure—murderer of the King's subjects—debaucher of the public morality—degrader of the Constitution—tarnisher of the British empire," by frequency of use lose all meaning whatsoever, and dwindling into terms, not of any peculiar reproach, but of ordinary appellation?—And why, gentlemen, is this permitted in that country?—I'll tell you why; because in that country they are yet wise enough to see, that the measures of the State are the proper subjects for the Freedom of the Press; that the principles relating to *personal* slander, do not apply to Rulers or to Ministers; that to publish an attack upon a *public* Minister, without any regard to truth, but merely because of its tendency to a breach of the peace, would be ridiculous in the extreme. What breach of the peace, gentlemen, I pray you is it in such a case? Is it the tendency of such publications, to provoke Mr. Pitt or Mr. Dundas, to break the head of the writer, if they should happen to meet him? No, gentlemen, in that country this freedom is exercised, because the people feel it to be their right; and it is wisely suffered to pass by the State, from a consciousness that it would be vain to oppose it; a consciousness confirmed by the event of every incautious experiment. It is suffered to pass from a conviction, that in a Court of Justice at least, the bulwarks of the Constitution will not be surrendered to the State, and that the intended victim, whether clothed in the humble guise of honest industry, or decked in the honors of genius, and virtue, and philosophy; whether an Hardy or a Tooke,* will find certain protection in the honesty and spirit of an English jury.

But, gentlemen, I suppose Mr. Attorney will scarcely wish to carry his doctrine altogether so far. Indeed, I remember, he declared himself a most zealous advocate for the Liberty of the Press. I may, therefore, even according to him, presume to make some observations on the conduct of the existing government. I should wish to know how far he supposes it to extend; is it to the composition of lampoons and madrigals, to be sung down the grates by ragged ballad mongers, to kitchen maids and footmen?—I will not suppose that the means to confine it to those ebullitions of Billingsgate, to those cataracts of ribaldry and scurrility, that are daily spouting upon the miseries of our wretched fellow sufferers, and the unavailing efforts of those who have vainly laboured in their cause. I will not suppose that he confines it to the poetic licence of a birth-day ode; the Laureat would not use such language! in which case I do entirely agree with him, that the truth or the falshood is as perfectly immaterial

* See these trials, so honourable to the independency of English juries, and to the abilities of Mr. Erskine and Mr. Tooke.

al to the Law, as it is to the Laureat, as perfectly unrestrained by the law of the land, as it is by any law of decency or shame, or modesty or decorum. But as to the privilege of censure or blame, I am sorry that the learned gentleman has not favoured you with *his* notion of the Liberty of the Press. Suppose an Irish Viceroy acts "a very little absurdly"—May the Press venture to be "respectfully comical upon that absurdity?"—The learned Counsel does not at least in terms give a negative to that—But let me treat you honestly, and go further, to a more material point: Suppose an Irish Viceroy does an act that brings scandal upon his master—that fills the mind of a reasonable man with the fear of approaching despotism, that leaves no hope to the people of preserving themselves and their children from chains, but in common confederacy for common safety. What is that honest man in that case to do?—I am sorry "the right honourable advocate for the liberty of the Press" has not told you his opinion, at least in any express words. I will therefore venture to give you my humbler thought upon the subject.

I think an honest man ought to tell the people frankly and boldly of their peril, and, I must say, I can imagine no villainy greater than that of his holding a traiterous silence at such a crisis, except the villainy and baseness of prosecuting him, or of finding him guilty for such an honest discharge of his public duty. And I found myself on the known principle of the Revolution of England, namely, that the Crown itself may be abdicated by certain abuses of the trust reposed, and that there are possible excesses of arbitrary power, which it is not only the right, but the bounden duty of every honest man to resist at the risque of his fortune and his life. Now, Gentlemen, if this reasoning be admitted, and it cannot be denied, if there be any possible event in which the people are obliged to look only to themselves, and are justified in doing so, can you be so absurd as to say that it is lawful to the people to act upon it when it unfortunately does arrive, but that it is criminal in any man to tell them that the miserable event has actually arrived, or is imminently approaching? Far am I, gentlemen, from insinuating that (extreme as it is) our misery has been matured into any deplorable crisis of this kind, from which I pray that the Almighty God may for ever preserve us—But I am putting my principle upon the strongest ground, and most favourable to my opponents, namely, that it never can be criminal to say any thing of the Government but what is false; and I put this in the extreme, in order to demonstrate to you *a fortiori*, that the privilege of speaking truth to the people, which holds in the last extremity, must also obtain in every stage of inferior importance; and that however a Court may have decided before the late act, that the truth was immaterial in case of libel, that since that act no honest Jury can be governed by such a principle.

Be pleased now, gentlemen, to consider the grounds upon which this publication is called a libel, and criminal. Mr. Attorney tells you it tends to excite sedition and insurrection. Let me again remind you, that the truth of this charge is not denied by the noble prosecutor. What is it then, that tends to excite sedition and insurrection? "The act that is charged upon the prosecutor, and is not attempted to be denied" And, gracious God! Gentlemen of the Jury, is the public statement of the King's representative this? "I have done a deed that must fill the mind of every feeling or thinking man with horror and indignation, that must alienate every man that knows it, from the King's government, and endanger the separation of this distracted empire; the traverser has had the guilt of publishing this fact which I myself acknowledge, and I pray you find to him guilty." Is this the case which the Lord Lieutenant of Ireland brings forward? Is this the principle for which he ventures, at a dreadful crisis like the present, to contend in a court of justice? Is this the picture which he wishes to hold out of himself, to the justice and humanity of his own countrymen? Is this the history which he wishes to be read by the poor Irishman of the South and of the North, by the sister nation, and the common enemy.

With the profoundest respect, permit me humbly to defend his Excellency, even against his own opinion. The guilt of this publication he is pleased to think, consists in this, that it tends to insurrection. Upon what can such a fear be supported? After the multitudes which have perished in this unhappy nation within the last three years, and which has been borne with a patience unparalelled in the story of nations, can any man suppose that the fate of a single individual could lead to resistance or insurrection? But suppose that it might, what ought to be the conduct of an honest man? Should it not be to apprize the government and the country of the approaching danger? Should it not be, to say to the Viceroy, "you will drive the people to madness, if you persevere in such bloody councils, you will alienate the Irish nation, you will distract the common force, and you will invite the common enemy." Should not an honest man say to the people, "the measure of your affliction is great, but you need not resort for remedy to any desperate expedients. If the King's Minister is defective in humanity or wisdom, his royal Master, and your beloved Sovereign is abounding in both"—At such a moment, can you be so senseless as not to feel that any one of you ought to hold such language, or is it possible you could be so infatuated, as to punish the man who was honest enough to hold it? Or is it possible that you could bring yourselves to say to your country, that at such a season, the Press ought to sleep upon its post,

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or to act like the perfidious watchman on his round, that sees the villain wrenching the door, or the flames bursting from the windows, while the inhabitant is wrapt in sleep and cries out, "past five o'clock, the morning is fair, and all well!"

On this part of the case, I shall only put one question to you. I do not affect to say it is similar in all its points; I do not affect to compare the humble fortunes of Orr, with the sainted names of Russel or of Sydney; still less am I willing to find any likeness between the present period and the year 1683.—But I will put a question to you completely paralell in principle. When that unhappy and misguided Monarch had shed the sacred blood, which their noble hearts had matured into a fit cement of revolution—if any honest Englishman had been brought to trial for daring to proclaim to the world his abhorrence of such a deed, what would you have thought of the English Jury that could have said, We know in our hearts that what he said was true and honest; but we will say upon our oaths, that it was false and criminal, and we will by that base subserviency, add another item to the catalogue of public wrongs, and another argument for the necessity of an appeal to Heaven for redress.

Gentlemen, I am perfectly aware that what I say may be easily misconstrued, but if you listen to me with the same fairness that I address you, I cannot be misunderstood. When I shew you the full extent of your political rights and remedies; when I answer those slanderers of British liberty, who degrade the Monarch into a despot, who degrade the stedfastness of law, into the waywardness of will; when I shew you the inestimable stores of political wealth so dearly acquired by our ancestors, and so solemnly bequeathed; and when I shew you how much of that precious inheritance has yet survived all the prodigality of their posterity, I am far from saying that I stand in need of it all upon the present occasion. No, gentlemen, far indeed am I from such a sentiment. No man more deeply than myself, deplores the present melancholy state of our unhappy country. Neither does any man more fervently wish for the return of peace and tranquillity, through the natural channels of mercy and of justice. I have seen too much of force and of violence, to hope much good from the continuance of them on one side, or retaliation from another. I have seen too much of late, of political re-building, not to have observed that to demolish, is not the shortest way to repair. It is with pain and anguish that I should search for the miserable right of breaking ancient ties, or going in quest of new relations, or untried adventurers. No, gentlemen, the case of my client rests not upon these sad privileges of despair. I trust that as to the fact, namely, the intention of exciting insurrection, you must see it cannot be found in this publication, that it is the mere

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idle, unsupported imputation of malice, or panic, or falsehood. And that as to the law, so far has he been from transgressing the limits of the Constitution, that whole regions lie between him and those limits which he has not trod: and which I pray to Heaven, it may never be necessary for any of us to tread.

Gentlemen, Mr. Attorney General has been pleased to open another battery upon this publication, which I do trust I shall silence, unless I flatter myself too much in supposing that hitherto my resistance has not been utterly unsuccessful. He abuses it for the foul and insolent familiarity of its address. I do clearly understand his idea; he considers the Freedom of the Press to be the license of offering that paltry adulation which no man ought to stoop to utter or to hear; he supposes the Freedom of the Press ought to be like the freedom of a *King's Jester*, who, instead of reproving the faults of which Majesty ought to be ashamed, is base and cunning enough, under the mask of servile and adulatory censure, to stroke down and pamper those vices of which it is foolish enough to be vain.—He would not have the Press presume to tell the Viceroy, that the prerogative of mercy is a trust for the benefit of the subject, and not a gaudy feather stuck in the diadem to shake in the wind, and by the waving of the gaudy plumage to amuse the vanity of the wearer.—He would not have it say to him, that the discretion of the Crown, as to *mercy*, is like the discretion of a Court of Justice as to *law*, and that in the one case, as well as the other, wherever the propriety of the exercise of it appears, it is equally a matter of right. He would have the Press all fierceness to the People, and all sycophancy to Power; he would have it considered the mad and phrenetic depopulations of Authority, like the awful and inscrutable dispensations of Providence, and say to the unfeeling and despotic spoiler in the blasphemed and insulted language of religious resignation, "the Lord hath given, and the Lord hath taken away, blessed be the name of the Lord!"

But let me condense the generality of the learned gentleman's invective into questions that you can conceive. Does he mean that the air of this publication is rustic and uncourtly? Does he mean that when Marcus presumed to ascend the steps of the Castle, and to address the Viceroy, he did not turn out his toes as he ought to have done? But, gentlemen, you are not a jury of dancing-masters—or does the learned gentleman mean, that the language is coarse and vulgar? If this be his complaint, my client has but a poor advocate. I do not pretend to be a mighty grammarian, or a formidable critic; but I would beg leave to suggest to you in serious humility, that a FREE PRESS can be supported only by the ardor of men who feel the prompting sting of real or supposed capacity; who write from the enthusiasm of virtue, or the ambition of praise, and over whom,

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if you exercise the rigour of grammatical censorship, you will inspire them with as mean an opinion of your integrity as your wisdom, and inevitably drive them from their post—and if you do, rely upon it, you will reduce the spirit of Publication, and with it the Press of this country, to what it for a long interval has been, the register of births, and fairs, and funerals, and the general abuse of the people and their friends.

But, gentlemen, in order to bring this charge of insolence and vulgarity to the test, let me ask you whether you know of any language which could have adequately described the idea of mercy denied where it ought to have been granted, or of any phrase vigorous enough to convey the indignation which an honest man would have felt upon such a subject? Let me beg of you for a moment to suppose, that any one of you had been the writer of this very severe expostulation with the Viceroy, and that you had been the witness of the whole progress of this never to be forgotten catastrophe. Let me suppose that you had known the charge upon which Mr. Orr was apprehended, the charge of abjuring that bigotry which had torn and disgraced his country, of pledging himself to restore the people of his country to their place in the Constitution, and of binding himself never to be the betrayer of his fellow-labourers in that enterprize; that you had seen him upon that charge removed from his industry, and confined in a gaol; that through the slow and lingering progress of twelve tedious months you had seen him confined in a dungeon, shut out from the common use of air and of his own limbs; that day after day you had marked the unhappy captive, cheered by no sound but the cries of his family, or the clanking of his chains; that you had seen him at last brought to his trial; that you had seen the vile and perjured informer deposing against his life; that you had seen the drunken, and worn out, and terrified jury give in a verdict of death; that you had seen the same jury, when their returning sobriety had brought back their consciences, prostrate themselves before the humanity of the Bench, and pray that the mercy of the Crown might save their characters from the reproach of an involuntary crime, their consciences from the torture of eternal self-condemnation, and their souls from the indelible stain of innocent blood.

Let me suppose that you had seen the respite given, and that contrite and honest recommendation transmitted to that seat, where mercy was presumed to dwell; that now, and before unheard of crimes, are discovered against the informer; that the Royal mercy seems to relent, and that a new respite is sent to the prisoner; that time is taken, as the learned Counsel for the Crown has expressed it, to see whether mercy *could* be extended or not! that after that period of lingering deliberation passed, a third respite is transmitted; that the unhappy captive

tive himself feels the cheering hope of being restored to a family that he had adored, to a character that he had never stained, and to a country that he had ever loved ; that you had seen his wife and children upon their knees, giving those tears to gratitude, which their locked and frozen hearts could not give to anguish and despair, and imploring the blessings of eternal providence upon his head, who had graciously spared the father, and restored him to his children ; that you had seen the olive branch sent into his little ark, but no sign that the waters had subsided—" Alas ! nor wife, nor children more shall he behold, nor friends, nor sacred home !"—No seraph Mercy unbars his dungeon, and leads him forth to light and life, but the Minister of Death hurries him to the scene of suffering and of shame ; where, unmoved by the hostile array of artillery and armed men collected together, to secure, or to insult, or to disturb him, he dies with a solemn declaration of his innocence, and utters his last breath in a prayer for the liberty of his country !—Let me now ask you, if any of you had addressed the public ear upon so foul and monstrous a subject, in what language would you have conveyed the feelings of horror and indignation ? Would you have stooped to the meanness of qualified complaint—would you have been mean enough—but I entreat your forgiveness—I do not think meanly of you ; had I thought so meanly of you, I could not suffer my mind to commune with you as it has done ; had I thought you that base and vile instrument, attuned by hope and by fear, into discord and falsehood, from whose vulgar string no groan of suffering could vibrate, no voice of integrity or honor could speak ; let me honestly tell you, I should have scorned to fling my hand across it ; I should have left it to a fitter minstrel ; if I do not therefore grossly err in my opinion of you, I could use no language upon such a subject as this, that must not lag behind the rapidity of your feelings, and that would not disgrace those feelings, if it attempted to describe them.

Gentlemen, I am not unconscious that the learned Counsel for the Crown seemed to address you with a confidence of a very different kind ; he seemed to expect a kind and respectful sympathy from you with the feelings of the Castle, and the griefs of chided authority. Perhaps, gentlemen, he may know you better than I do ; if he does, he has spoken to you as he ought ; he has been right in telling you, that if the reprobation of this writer is weak, it is because his genius could not make it stronger ; he has been right in telling you that his language has not been braided and festooned as elegantly as it might ; that he has not pinched the miserable plaits of his phraseology, nor placed his patches and feathers with that correctness of millinery which became so exalted a person. If

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you agree with him, gentlemen of the Jury, if you think that the man who ventures at the hazard of his own life, to rescue from the deep, "the drowned honour of his country," must not presume upon the guilty familiarity of plucking it up by the locks, I have no more to say—do a courteous thing—upright and honest Jurors, find a civil and obliging verdict against the Printer!—And when you have done so, march through the ranks of your fellow citizens to your own homes, and bear their looks as ye pass along; retire to the bosom of your families and your children, and when you are presiding over the morality of the parental board, tell those infants, who are to be the future men of Ireland, the history of this day. Form their young minds by your precepts, and confirm those precepts by your own example; teach them how discreetly allegiance may be perjured on the table, or loyalty be foresworn in the Jury-box—and when you have done so, tell them the story of Orr; tell them of his captivity of his children, of his hopes, of his disappointments, of his courage, and of his death; and when you find your little hearers hanging upon your lips, when you see their eyes overflow with sympathy and sorrow, and their young hearts bursting with the pangs of anticipated orphanage, tell them, that you had the boldness, and the injustice to stigmatize the man who had dared to publish the transaction!

Gentlemen, I believe I told you before, that the conduct of the Viceroy was a small part indeed of the subject of this trial. If the vindication of his mere personal character had been as it ought to have been, the sole object of this prosecution, I should have felt the most respectful regret at seeing a person of his high consideration come forward in a Court of public justice, in one and the same breath to admit the truth, and to demand the punishment of a publication like the present; to prevent the chance he might have had of such an accusation being disbelieved, and by a prosecution like this, to give to the passing stricture of a news-paper, that life and body and action and reality, that proves it to all mankind, and makes the record of it indelible. Even as it is, I do own I feel the utmost concern, that his name should have been soiled by being mixed in a question of which it is the mere pretext and scape-goat. Mr. Attorney was too wise to state to you the real question, or the object which he wished to be answered by your verdict. Do you remember that he was pleased to say, that this publication was a base and foul misrepresentation of the virtue and wisdom of the Government, and a false and audacious statement to the world, that the King's government in Ireland was base enough to pay informers for taking away the lives of the people—When I heard this statement to-day, I doubted whether you were aware of its tendency or not.—It is now necessary that I should explain it to you more at large.

You

You cannot be ignorant of the great conflict between Prerogative and Privilege which hath convulsed the country for the last fifteen years; when I say Privilege, you cannot suppose that I mean the privileges of the House of Commons; I mean the privileges of the People. You are no strangers to the various modes by which the people laboured to approach their object. Delegations, conventions, remonstrances, resolutions, petitions to the Parliament, petitions to the Throne. It might not be decorous in this place to state to you with any sharpness, the various modes of resistance that were employed on the other side; but you, all of you, seem old enough to remember the variety of acts of parliament that have been made, by which the people were deprived, session after session, of what they had supposed to be the known and established fundamentals of the Constitution; the right of public debate, the right of public petition, the right of bail, the right of trial, the right of arms for self-defence; until at last, even the relics of popular privilege became superceded by Military force; the Press extinguished; and the State found its last entrenchment in the grave of the Constitution. As little can you be strangers to the tremendous confederations of hundreds of thousands of our countrymen, of the nature and the objects of which such a variety of opinions have been propagated and entertained.

The writer of this letter has presumed to censure the recall of Lord Fitzwilliam, as well as the measures of the present Viceroy. Into this subject I do not enter; but you cannot yourselves forget, that the conciliatory measures of the former noble Lord had produced an almost miraculous unanimity in this country; and much do I regret, and sure I am that it is not without pain you can reflect, how unfortunately the conduct of his successor has terminated. His intentions might have been the best; I neither know them nor condemn them, but their terrible effects you cannot be blind to. Every new act of coercion has been followed by some new symptom of discontent, and every new attack provoked some new paroxysm of resentment, or some new combination of resistance. In this deplorable state of affairs, convulsed and distracted within, and menaced by a most formidable enemy from without, it was thought that public safety might be found in union and conciliation, and repeated applications were made to the parliament of this kingdom for a calm enquiry into the complaints of the people; these applications were made in vain. Impressed by the same motives, Mr. Fox brought the same subject before the Commons of England, and ventured to ascribe the perilous state of Ireland to the severity of its government. Even his stupendous abilities, excited by the liveliest sympathy with our sufferings, and animated by the most ardent zeal to restore the strength

strength with the union of the empire, were repeatedly exerted without success. The fact of discontent was denied; the fact of coercion was denied; and the consequence was the coercion became more implacable, and the discontent more threatening and irreconcileable. A similar application was made in the beginning of this session in the Peers of Great Britain by our illustrious countryman (Lord Moira), of whom I do not wonder that my learned friend should have observed, how much virtue can fling pedigree into the shade; or how much the transient honour of a body inherited from Man, is obscured by the lustre of an intellect derived from God. He, after being an eye witness of this country, presented the miserable picture of what he had seen, and to the astonishment of every man in Ireland, the existence of those facts was ventured to be denied; the conduct of the present Viceroy was justified and applauded; and the necessity of continuing that conduct was insisted upon, as the only means of preserving the Constitusion, the peace, and the prosperity of Ireland. The moment the learned Counsel had talked of this publication as a false statement of the conduct of the government and the condition of the people, no man could be at a loss to see that that awful question which had been dismissed from the Commons of Ireland, and from the Lords and Commons of Great Britain, is now brought forward to be tried by a side wind and in a collateral way, by a criminal prosecution.

I tell you therefore, gentlemen of the Jury, it is not with respect to Mr. Orr that your verdict is now sought; you are called upon on your oaths to say, that the government is wise and merciful, that the people are prosperous and happy, that military law ought to be continued, that the British Constitution could not with safety be restored to this country, and that the statements of a contrary import by your advocates in either country were libellous and false. I tell you these are the questions, and I ask you, can you have the front to give the expected answer in the face of a community who know the country as well as you do. Let me ask you, how you could reconcile with such a verdict the gaols, the tenders, the gibbets, the conflagrations, the murders, the Proclamations that we hear of every day in the streets, and see every day in the country?—What are the processions of the learned Counsel himself, Circuit after Circuit?—Merciful God, what is the state of Ireland, and where shall you find the wretched inhabitant of this land!—You may find him perhaps in a gaol, the only place of security, I had almost said, of ordinary habitation; you may see him flying by the conflagrations of his own dwelling; or you may find his bones bleaching on the green fields of his country; or he may be found tossing upon the surface of the ocean, and mingling his groans with those tempests less savage than his per-

persecutors, that drift him to a returnless distance from his family and his home. And yet with these facts ringing in the ears, and staring in the face of the prosecutor, you are called upon to say, on your oaths, that these facts do not exist—You are called upon in defiance of shame, of truth, of honour, to deny the sufferings under which you groan, and to flatter the persecution that tramples you under foot!

But the learned gentleman is further pleased to say, that the traverser has charged the Government with the encouragement of informers. This, gentlemen, is another small fact that you are to deny at the hazard of your souls, and upon the solemnity of your oaths. You are upon your oaths to say to the sister country, that the government of Ireland uses no such abominable instruments of destruction as informers. Let me ask you honestly, what do you feel, when, in my hearing, when in the face of this audience, you are called upon to give a verdict that every man of us, and every man of you, know by the testimony of your own eyes to be utterly and absolutely false?—I speak not now of the public proclamation of informers, with a promise of secrecy and of extravagant reward; I speak not of the fate of those horrid wretches who have been so often transferred from the table to the dock, and from the dock to the pillory; I speak of what your own eyes have seen day after day during the course of this Commission from the box where you are now sitting; the number of horrid miscreants who avowed upon their oaths, that they had come from the very seat of Government—from the Castle, where they had been worked upon by the fear of death and the hopes of compensation, to give evidence against their fellows, that the mild and wholesome councils of this government are holden over these catacombs of living death, where the wretch that is buried a man, lies till his heart has time to fester and dissolve, and is then dug up a witness.*

Is this fancy, or is it fact?—Have you not seen him after his resurrection from that tomb, after having been dug out of the region of death and corruption, make his appearance upon the table, the living image of life and of death, and the supreme arbiter of both?—Have you not marked when he entered, how the stormy wave of the multitude retired at his approach?—Have you not marked how the human heart bowed to the supremacy of his power, in the undissembled homage of deferential horror?—How his glance, like the lightning of Heaven, seemed to rive the body of the accused, and mark it for the grave, while his voice warned the devoted wretch of woe and death; a death which no innocence can escape, no art elude, no force resist, no antidote prevent.—There was an antidote—

* Here is a fine picture of that hateful thing, under a corrupt government, called, *An Informer* — It may be set in comparison with Milton's description of Sin and Death.

a juror's oath—but even that adamantine chain that bound the integrity of man to the throne of eternal justice, is solved and melted in the breath that issues from *the informer's mouth*—Conscience swings from her mooring, and the appalled and affrighted Juror, consults his own safety in the surrender of the victim:—

Et quæ sibi quisque timebat,
Unius in miseri exitium conversa tulere.

Gentlemen, I feel I must have tired your patience, but I have been forced into this length by the prosecutor who has thought fit to introduce those extraordinary topics, and to bring a question of mere politics to trial under the form of a criminal prosecution. I cannot say I am surprised that this has been done, or that you should be solicited by the same inducements and from the same motives, as if your verdict was a vote of approbation. I do not wonder that the government of Ireland should stand appalled at the state to which we are reduced. I wonder not they should start at the public voice, and labour to stifle or to contradict it. I wonder not that at this arduous crisis, when the very existence of the empire is at stake, when its strongest and most precious limb is not girt with the sword for battle, but pressed by the tourniquat for amputation; when they find the coldness of death already begun in those extremities where it never ends, that they are terrified at what they have done, and wish to say to the surviving parties of that empire, "they cannot say that we did it." I wonder not that they should consider their conduct as no immaterial question for a Court of criminal jurisdiction, and wish anxiously as on an inquest of blood for the kind acquittal of a friendly jury. I wonder not they should wish to close the chasm they have opened by flinging you into the abyss. But trust me, my countrymen, you might perish in it, but you could not close it; trust me if it is yet possible to close it, it can be done only by truth and honor: Trust me, that such an effect could no more be wrought by the sacrifice of a jury, than by the sacrifice of Orr. As a State measure the one would be as unwise and unavailing as the other. But while you are yet upon the brink, while you are yet visible, let me, before we part, remind you once more of your aweful situation.—The law upon this subject gives you supreme dominion. Hope not for much assistance from his Lordship. On such occasions perhaps the duty of the Court is to be cold and neutral. I cannot but admire the dignity he has supported during this trial; I am grateful for his patience. But let me tell you it is not his province to fan the sacred flame of patriotism in the jury box; as he has borne with the little extravagancies of the Law, do you bear with the little failings of the Press. Let me therefore remind you, that though the day may soon come

come when our ashes shall be scattered before the winds of Heaven, the memory of what you do cannot die; it will carry down to your posterity, your honour or your shame. In the presence and in the name of that ever living God, I do therefore conjure you to reflect that you have your characters, your consciences, that you have also the character, perhaps the ultimate destiny of your country in your hands. In that awful name, I do conjure you to have mercy upon your country and upon yourselves, and so to judge now, as you will hereafter be judged; and I do now submit the fate of my client, and of that country which we yet have in common, to your disposal.

Mr. *Prime Sergeant* replied to Mr. Curran.—He said it had become very difficult for him to answer the two very contradictory addresses which the Counsel for the traverser had made to the Jury. It did not appear to him, that either of them had attended to the case of their client, but on the contrary that they seemed totally regardless of him. He observed at some length on the assertion of Mr. Curran, that the jury had been collected by an officer of the Crown for the purpose of convicting the traverser. He subscribed most heartily to the panegyric paid to the honor and integrity every jury ought to possess, and which had been paid to the jury then in the box—he said that the duty of the Counsel for the traverser and the Counsel for the Crown differed; he ought to make some excuse for the conduct of the former for departing from the duty they owed to their client, and he sincerely hoped the public would pardon them for it.

Mr. Prime Sergeant then observed at length on the libel, which he read paragraph by paragraph. He said many libellous attacks had been made upon the administration of justice in this country, and upon the government; but it was reserved for the traverser to make a desperate attack upon the temple of justice, profaning its very altars, and reviling its ministers.—Notwithstanding the traverser at the bar stood indicted for having printed and published the libel in the indictment, he firmly believed that the traverser was only an instrument in the hands of others. If it was necessary to look for an aggravation of the offence charged upon the traverser, it would be found in the support given him by his counsel, which had consisted of nothing else but the display and pomp of language. Mr. Prime Sergeant then made a few observations on the nature of the offence with which the traverser stood charged, and said if the jury were of his opinion, it was both a false, scandalous and seditious libel, and they ought to find him guilty: if on the contrary, they did not believe that, then in that case they ought to find him not guilty.

Mr.

Mr. *Justice Downes* charged the jury—He observed that they had been amused by a display of eloquence from the counsel for the traverser, running wide of the matter before them. He would however endeavour to point out to them the object for their consideration, divested of all irrelevant matter. His Lordship then stated to the jury the libel, as it appeared on the record, and said, the question which would be for their consideration would be, whether the traverser at the bar was the printer and publisher of the matter called a libel, and to find the intent with which he published it; and if the jury found that the traverser had published the paper called a libel, they were then to enquire whether the inuendoes had been well laid, and properly applied in the indictment, and whether it bears the construction imputed to it by the inuendoes; and if the jury were of opinion, that he the traverser published it, and that it was a libel, and that the inuendoes had been well laid and properly applied, there could be no doubt on the whole of the case but that the jury ought to find the traverser guilty.

It was for the jury, his Lordship said, to consider well the evidence, and for them also to consider if it carried the force of conviction to their minds, and to consider whether with the evidence as connected by *Major Sirr*, (which his Lordship repeated) they had any rational doubt on their minds, that the traverser was the publisher of that paper called a libel. On this point, his Lordship said, he was not to give a positive opinion, but he left it entirely to the jury, and if they were of opinion, that he the traverser did publish the letter, then their duty was to see if it was a libel or not.

His Lordship then stated the act of parliament to the jury, for securing the Liberty of the Press, by which act, is left to the jury, the final decision of the question, whether the publication be a libel or not; and at the same time, provides that the Judge shall give his opinion to the jury, whether it is in his mind a libel.

The act of parliament having given to the Judge this power, his Lordship said he would state to the Jury his opinion upon the publication, and it was for them to follow or reject that opinion. In the execution of that duty, he would say to them, that a paper which reflects on the administration of the justice of the country, as the paper before them appeared to do; that a paper which leads to degrade the administration of justice in the eyes of the people, which in his opinion, the paper before the jury did, was a libel. If the jury were of opinion, that the publication called the execution of a criminal in due course of law, murder, let the jury judge for themselves if that was not a libel, his opinion was, that such a charge was a libel. Was not to charge a jury, which had brought in a verdict of guilty

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against a criminal, with having been beastly drunk, a libel? In his opinion it was. Another offence charged, is, that if the criminal had committed the fact, for which he suffered, it was no crime but a meritorious act. With what view could that paper have been written? If upon the whole of the evidence, the jury believed that the charge in the indictment states it true, when it says that the libel was printed with a view of devising, contriving, and falsely, maliciously, and seditiously intending, &c. then the charge would be fully established.

There had been no evidence given to shew that the publication was innocent. It was not necesary for the counsel for the prosecution to shew another intent of the printer and publisher, than what appeared on the face of the paper itself; and if the jury can feel that the intention of the paper, was to state a false, seditious, and malicious libel, it would be sufficient to ground their verdict of guilty. His Lordship said he took this to be the established law.

His Lordship said, he had rejected evidence of the truth to be given, because it had been the established law that the truth or falsehood of a libel, was immaterial. At the very time the Libel-bill was going through the house in England, from which the present bill is copied, various questions were put to the Judges of England, whether on a trial, on an information or indictment for a libel, the truth or falsehood was material. The Judges were of opinion it was not. This opinion was grounded upon a very sound reason—it would be trying a man who was not present, which would be totally inconsistent with the spirit of justice. Another resason why his Lordship would not admit the evidence of the truth was, the libel was against the administration of the country; and the Court in which he sat had no authority, and was not competent to try the conduct of government—the Court of Parliament was the only court in which that could be brought forward.

His Lordship then said, that if the jury did believe that malice directed the publication and writing of that paper termed a libel, it would be for them to consider whether they would adopt the opinion he had given them upon the matter contained in it or not; but that if they had any rational doubt that the paper was not published with a malicious purpose, they ought to acquit him.

The Jury retired for a short time, and then brought in a verdict—GUILTY.

SAT-

SATURDAY, *Dec.* 23.

This day Mr. Finerty was brought up to receieve sentence. On his being put to the bar, he addressed the Judge as follows:

My Lord,

From the very able defence which has been made for me, I should think it utterly unnecessary to trouble your Lordship with any observations of mine, if the language of Mr. Prime Serjeant, in his address to the Jury, had not imperiously demanded some reply. It may accord well with the general system of our government, to inflict a severe punishment upon me: but what end it can answer, to defame and abuse my character, I am at a loss to discover. Among the epithets which the learned Council so liberally dealt out against me, he was pleased to call me "the tool of a party." However humble I may be, my Lord, I should spurn the idea of becoming the instrument of any party, or any man—I was influenced solely by my own sense of the situation of the country, and have uniformly acted from that feeling of patriotism, which I hope it is not yet considered criminal to indulge; and I trust the general conduct of the PRESS has fully evinced to the People, that its object was truth and the good of the nation, unconnected with the views, or unwarped by the prejudices of any party.

If I would stoop, my Lord, to become the tool of a party, I might have easily released myself from prosecution and reward; and this would have been clearly illustrated if your Lordship had suffered the persons summoned on my trial to be examined.

I have been now, my Lord, eight weeks in confinement, during which I have experienced the severest rigours of a jail—the offence was bailable, but it became impossible for me, from the humility of my connections, to procure bail to the amount demanded; probably had any person stood forward, he would have been *marked;* and sensible of that, I preferred imprisonment to the exposure of a friend to danger.—But not contented with my imprisonment and persecution, it seemed the intention of some of the Agents of government to render me infamous.—For this purpose, my Lord, about three weeks since, I was taken from Newgate, which ought at least to have been a place of security to me, at seven o'clock in the evening, by what authority of law I know not, to Alderman Alexander's office; and it was there proposed to me to surrender the different gentlemen who had favoured the PRESS with their productions, particularly the author of MARCUS. Every artifice of hope and fear was held out to me. After a variety of interrogations, and after detaining me there until two o'clock in the morning, I was dispatched to Kilmainham under an escort, where being refused admittance, I was returned to Newgate—from whence, about

11 o'clock on the same day, I was again taken to Alderman Alexander's, where I underwent a similar scrutiny, until three o'clock, when the Alderman left me, as he said, to go to Secretary Cooke, to know from him how he would wish to dispose of me, or if he desired to ask me any questions. At eight in the evening, the Alderman, for whom I was obliged to wait, was pleased to write to one of his officers to have me remanded to prison. In the course of this extraordinary inquisition, my Lord, I was threatened with a species of punishment, to a man educated as I have been in the principles of virtue, and honesty, and manly pride, more terrible than death—a punishment, my Lord, which I am too proud to name, and which, were it now to make part of my sentence, I fear, although I hope I am no coward, I should not be able to persuade myself to live to meet. By what authority any man could presume to prejudge your Lordship's sentence, or anticipate the verdict of a jury, it is not for me to decide. I cannot conceive what sort of solicitude these men entertain for the dignity of the Irish character, or the honor of the government, who thus endeavour to stain it by the multiplication of informers. It may be answered, my Lord, that informers are useful—so is the office of common hang-man; but will any man of common honesty, or common sense, imitate the conduct, or plead for the character of either, particularly in a time when so many instances of profligacy have appeared amongst that class?

With respect to the publication, my Lord, which the Jury has pronounced a libel, the language of which undoubtedly is in some instances exceptionable, it was received in the letter-box by my clerk, who generally went to the office earlier than I, and taking it to the Printing-office, it was inserted, and the whole impression of the paper worked off before I saw it; but on remonstrating with the author, he produced to me such documents as put the truth of the statement beyond question; and these documents, my Lord, were yesterday in Court, and would, combined with the testimony of the witnesses present, if your Lordship had permitted their examination, have amply satisfied the jury of the facts. And heretofore, my Lord, I have been taught to think that truth was above all things important, and I never did believe it possible that truth and falsehood were in any instance equally guilty, or that the truth, though it might not altogether acquit, would not so much as extenuate; for if it would in any degree extenuate the offence, I suppose your Lordship would have thought it necessary that it should be heard, and I of consequence conceived the publication of Marcus's letter not alone innocent but praiseworthy, even though it did contain passages which I do not vindicate; but your Lordship's opinion and the verdict of the jury teaches a different lesson, and may serve to regulate my conduct in future.

I hope your Lordship will take the several circumstances I have stated into consideration—if guilt, my Lord, consists in the mind, I solemnly assure you, that I have examined my heart, and find that it perfectly absolves me from all and every criminality of intention; I have only then to inform your Lordship that a heavy fine would be tantamount to perpetual imprisonment, and long imprisonment little short of death; yet whatever punishment you may please to inflict, I trust I have sufficient fortitude arising from my sense of religion, and of the sacred cause for which I suffer, to enable me to bear it with resignation.

Mr. *Justice Downes* then proceeded to pass sentence upon the prisoner.—He told the prisoner he had listened to him with patience, that nothing had fallen from him to induce a mitigation of punishment, except what he had stated of the length of time he had been in confinement, which he would not forget in the sentence; as the time of the imprisonment should commence from the day of the arrest. That with respect to the libel being published without his immediate knowledge, if this were an excuse, which it was not, no evidence of the fact had been laid before the Jury.

Mr. Justice Downes then continued: Sir, in scornfully declaring that guilt or infamy was attached to assisting the discovery of guilt, you have affected a false spirit; and you have proved that the government would have afforded you mercy, which your libel asserted it was not in their nature to give.—You say there were documents which would have substantiated the facts. It would be monstrous indeed, that a Printer should take upon him to determine, what were sufficient documents to justify his censure of the government. The publication is a most atrocious libel on the administration of justice in all its branches. If the verdict had been as you have stated, and that the learned Judge had reason to suppose, that it was the result of perjury and intoxication, he would from his nature, have delighted in recommending the unfortunate man as an object of mercy; and surely such recommendation would have been attended to. Your libel says, these facts were true, and that the Lord Lieutenant was acquainted with them. It is impossible if they were true, and that they had come to the knowledge of the Chief Governor, and that the person was a proper object of mercy, pardon would not have followed, for there is no man whose heart is so steeled against mercy and humanity, as to have refused it.

It also says, "if Mr. Orr was guilty, what was his crime? It was administering an oath of love and charity. If it was an oath of extermination, he would have found mercy." What? say it was no crime, the administering an unlawful oath, when

from

from such oaths the present unfortunate state of the country springs? It was an oath binding the taker to be a member of a society formed for seditious purposes, whose end has on many occasions appeared in evidence subversive of order, and promoting an attachment to the enemies of the country. Your sentence is, "That you be imprisoned for two years from the day of your arrest, that you stand in the pillory for one hour, pay a fine of 20l. and at the expiration of your confinement give security yourself in 500l. and two sureties in 250l. each for your good behaviour for seven years."

SATURDAY, *Dec.* 30.

This day Mr. Peter Finerty, pursuant to his sentence, stood one hour in the pillory opposite to the Session house, in Green-street. An immense concourse of people attended this exhibition. Mr. Finerty was accompanied by some most respectable citizens. He appeared resigned, and upon being released from the restraint of this "*governmental engine for securing the Liberty of the Press,*" he addreseed the spectators in a few words—"My friends, you see how cheerfully I can suffer; I can suffer any thing provided it promotes the Liberty of my Country."—Upon this the spectators applauded by clapping of hands, the most marked silence having prevailed until then. Some of the guard who attended, being, we suppose, the *picked men* of the Armagh Militia, attacked the unarmed people Some of the Officers also were guilty of similar conduct; others, both officers and privates, acted like gentlemen and soldiers. Sheriff Pasley on this occasion, conducted himself with propriety.—The conduct of the people was peaceable and exemplary.

[Mr. Arthur O'Connor now became the Editor of ThePress, until that paper was also *put down*, and Mr. O'Connor sent to prison, where he continued till the peace of Amiens.]

THE TRIAL OF PATRICK FINNEY FOR *HIGH TREASON.*

COMMISSION OF OYER AND TERMINER.

ON Tuesday the 16th of January, 1798, at 9 o'clock, the Prisoner, Patrick Finney, was put to the bar, charged with High Treason, in compassing and imagining the death of the King; and also, for adhering to the King's enemies, that is, to the persons who exercise the powers of Government in France, &c.

ABSTRACT *of the* INDICTMENT.

FIRST COUNT.—That PatrickFinney, yeoman, on the 30th day of April, in the 37th year of the King, and divers other days at the City of Dublin, being a false traitor, did compass and imagine the death of our said Lord the King, and did traiterously and feloniously intend our said Lord the King to kill, murder, and put to death.

The *Overt Acts* laid were as follow: 1. Adhering to the persons exercising the powers of government in France, in case they should invade, or cause to be invaded, this kingdom of Ireland, they being enemies to the King and at war.—2. That the conspirators aforesaid did meet, &c. confer, consult, and deliberate about adhering to the persons exercising the powers of government in France —3. Adhering to the persons exercising the powers of government in France —4. Conspiring that one or more persons should be sent into France to excite an invasion of Ireland.—5. Conspiring that one or more persons should be sent into France to excite an invasion of this kingdom, and to make war herein; and for that purpose did ask, levy, and receive, &c. from other traitors, money, to wit, from each 20l. to defray the expences of the persons to be sent.—6. That conspiring, &c. they did send into France four persons unknown, to excite the persons exercising the powers of government in France to invade this kingdom, and make war therein.—7. Conspiring to send, and sending four persons into France to persuade invasion, and to aid them in invading and raising and making war; and Finney, then and there demanding and receiving money, viz. 20l. to defray the charges of said persons.—8. That

said

ſaid Patrick Finney became an United Iriſhman for the purpoſe of aſſiſting the perſons exerciſing the powers of government in France, and being met to the number of 48 other traitors, did divide into four ſplits, which each contained 12 traitors, and each ſplit did then choose one to be ſecretary, to conſult on behalf thereof with other ſplits, under the denomination of Baronial Meetings, for the purpoſe of adhering and making war, in caſe of an invaſion of Ireland from France, and then and there conſpiring an attack upon the Caſtle of Dublin, &c. to deprive his Majeſty of the ſtores and ammunition therein; and ſaid Finney to facilitate ſuch attack, did adviſe and commend other traitors to view White's-court, &c. and give their opinion to their ſeveral ſplits, ſo that their ſecretaries might report the ſame to their baronial meetings.—9. Adhering to the perſons exerciſing the powers of government in France, &c. and with 48 other conſpirators, divided into four ſplits, each containing 12, each ſplit chooſing a ſecretary to confer for the purpoſe of adhering to the enemy in caſe of invaſion, and confederating and agreeing that a violent attack ſhould be made on the ordnance ſtores, &c.—10. Conſulting, &c. to procure an invaſion.—11. Conſulting to raiſe inſurrection, rebellion and war, in caſe of invaſion of Ireland or Great Britain, from France.—12. Conſpiring to aſſiſt the perſons exerciſing the powers of government in France, in caſe of their invading this realm with ſhips and arms.

There was a ſecond count for "adhering to the King's enemies within the realm," and in ſupport of this count the overt acts laid were exactly the ſame as thoſe above recited.

The above abſtract from the indictment and overt acts ſets forth the charges.

The Right Hon. the *Attorney General*, began by ſhewing that the priſoner, Patrick Finney, ſtood indicted on a charge of high treaſon, of which there are ſeveral ſpecies; he ſtated two, as applying to the charge—one was the compaſſing the death of the King, and the other, adhering to the King's enemies.

On the firſt of theſe, compriſing the death of the King, he ſtated the meaning of the law. This ſpecies of high treaſon did not alone conſiſt in a direct attack on the King's perſon; the preſervation of his Majeſty's life depends much on the tranquillity of the State; any attempt, therefore, to interrupt that, muſt affect the ſafety of the King; as for inſtance, if war be levied within theſe realms, the King, as firſt magiſtrate, and engaged in the reſtoration of the public tranquillity, muſt have his life put in danger, and this inference being equally plain, if a direct attack be not made upon his life, there is nevertheleſs an indirect one, and thus the law conſtrues ſuch levying of war within the realm, a compaſſing the death of the King.

Having briefly ſtated the law as applying to the firſt ſpecies of high treaſon, the Attorney General then proceeded to the next, that of adhering to the King's enemies; a term indeed ſufficiently deſcriptive in itſelf, and capable of informing the plaineſt underſtanding. The laws of this country, calculated as they are for the peculiar protection of the ſubject, requires

that

that whatever the offence may be; however atrocious in its nature, the priſoner ſhall be furniſhed with a copy of his indictment, that he may have every advantage of preparation in his defence; and that he ſhall be furniſhed with that copy a certain number of days previous to his trial taking place. Another ſaving character of our laws is, that no man's life ſhall be endangered by general charges, and therefore the particular act or acts, conſtituting the offence charged, ſhall be ſet forth in the indictment, and fully proved to the ſatisfaction of the Court and the Jury.

Mr. Attorney General here recapitulated the ſeveral overt acts laid in the indictment, obſerving thereon, that if the jury ſhould find any of them ſatisfactorily proved againſt the priſoner, and alſo in the application of the charge of high treaſon, they would in such caſe find that verdict which a due ſenſe of duty to their King and Country would prompt—that the whole of the facts laid in the indictment would be ſo proved, he was inſtructed, confidently to expect from the evidence which he would produce; but if on the contrary, the priſoner ſhould prove innocent, none would participate more in the ſatisfaction which ſuch an event would excite in the human breaſt, than the officers of the Crown, by whom the proſecution was conducted. From the evidence which ſhould follow his ſtatement, it would appear, if he was rightly inſtructed, that, in laſt ſummer, there exiſted in this city, and the kingdom, a ſociety too well known by the name of *United Iriſhmen*, who were bound together by an oath of ſecrecy, and formed, as incontrovertibly proved by their conduct, for the purpoſe of ſubverting the eſtabliſhed government and Conſtitution of this kingdom —that there were men in this city, and the kingdom, actually ſo inſenſible to what they owed the laws of their country, as to enter into obligations of ſecrecy in conſpiracies directed againſt thoſe laws, and the Conſtitution from which they proceeded—that it would appear, theſe ſocieties were ſubdivided into ſplits, generally conſiſting of twelve men each, and having a Secretary and Treaſurer, into Baronial committees, which were formed of thoſe Secretaries and Treaſurers, who reported the progress of ſedition and treaſon from the ſub-committees or ſplits—over the baronial, were county committees, and over them again, provincial committees, organizing the growth of this monſtrous and abominable ſyſtem. It would appear that the object was the ſubverſion of the Conſtitution, and the meaſures to be used for effecting this object, were, firſt, the invitation of the French to invade this country—ſecond, the raiſing funds and arms, and ſwearing people to concur in the ſcheme—and the third, to ſeize on his Majeſty's arſenal.

It would alſo appear, (incredible as ſuch a thing may ſeem) that they heſitated not to deliberate cooly on the aſſaſſination of any perſons who ſhould give evidence againſt any of them—

but

but coming to the more minute circumſtances of the caſe, facts would be proved in ſupport of the charge againſt the priſoner, in every ſtep connected with the ſtatement made of the nature of this ſociety.

A perſon named O'Brien would prove, that on the 25th of April laſt, paſſing through Thomas-ſtreet, he met with the priſoner and a man of the name of Hyland, ſtanding at the door of a public houſe; the latter aſked O'Brien if he was *up*, at the same time paſſing the ſigns peculiar to the ſociety of United Iriſhmen; they told him that no man's life was ſafe who was not *up*, and that if he would not conſent to be ſworn, he might loſe his life before he got half the length of the ſtreet; they then, it would appear, brought O'Brien into the public houſe where were eight other perſons, and ſwore him firſt to ſecrecy, and afterwards to the teſt-oath of the United Iriſhmen; they then appointed to meet the following Sunday, 30th April, at the houſe of the widow Cochlan, Newmarket on the Coombe—the paſs-word to be "Mr. Green." O'Brien after paying Finney a ſhilling for ſwearing him, was permitted to go away, upon which he went to a Mr. Higgins, a Magiſtrate of the Queen's county, to whom he diſcovered what had paſſed in Thomas-ſtreet. Mr. H. told him it was his duty to reveal it at the Caſtle, and referred him to Colonel Henekir, who accompanied him to Lord Portarlington; the conſequence of which was, that O'Brien was adviſed to attend their meetings for ſome time, which he accordingly did. and in the course of theſe, as it would appear from O'Brien's own evidence, he learned a knowledge of the Society's ſending emiſſaries to France, to invite invaſion—raiſing funds to ſupport theſe, and deſerters from his Majeſty's troops, and concerting how to get poſſeſſion of his Majeſty's ordnance ſtores.

It would appear, that in all theſe meaſures, and theſe meetings, the priſoner at the bar was a principal perſon, and moſt active in their promotion; that in conſequence of the information communicated by O'Brien, a guard proceeded to one of thoſe meetings, whereat, as uſual, Finney was Director, and arreſted ſixteen perſons there aſſembled; Finney, however, having previouſly eſcaped with the papers of the ſociety, on an alarm given by the people of the houſe.

The right Hon. the Attorney General, after much more ſtatement of the caſe, concluded by recommending to the Jury to be guided by thoſe impreſſions of humanity and juſtice, which alone, he wiſhed to diſtinguiſh their verdict.

EVIDENCE *on the part of the* CROWN.

James O'Brien being ſworn, and examined by the Prime Sergeant, depoſed in ſubſtance, that on the 25th of April laſt, he met at the door of a public houſe in Thomas-ſtreet, and in company with the priſoner, Finney, a man named Hyland, with

with whom he was acquainted; that Hyland aſked him if he was UP? the witneſs expreſſing ignorance of what he meant, Hyland ſaid "its a wonder, James, you're not UP," and Finney explained it, to ſignify a perſon's being a United Iriſhman, and adviſed him to become one, or he might loſe his life, before he went half the length of the ſtreet; and if he went into the houſe, he ſhould know the particulars; witneſs accordingly went into the public houſe, and entered a room where there were ten more perſons, one of whom, named Buckley, aſked the priſoner, Finney, if he had "caught a bird," adding, that he, O'Brien, ſhould never leave that until made a *Chriſtian* of —he was then ſworn to ſecrecy, and alſo to the Conſtitution oath of the United Iriſhmen, by Finney and Hyland, in preſence and hearing of the priſoner, who told witneſs, that every man rich and poor, who was not an United Iriſhmam, very would ſhortly loſe his life. O'Brien depoſed, that he took the oaths from fear of his life. After paying a ſhilling, ſaid to be for the good of the cauſe, he was initiated into the ſigns and words of the ſociety. The Sunday following, was appointed to meet at the Widow Cochlan's on the Coombe, where Finney ſaid the witneſs would be further enlightened. Recollected that there was a printed paper read, which ſtated among other things, that any placeman, and penſioner, who was not an United Iriſhman, ſhould loſe his life. Being permitted to depart on his way home, he recollected that perſons entering into the ſocieties of Defenders, were taken up, if diſcovered; ſo he determined to inform Mr. Higgins, a magiſtrate of the Queen's co. of what had paſſed, and did; he was adviſed to continue ſome time in the ſociety;—went to the following meeting, at Newmarket, on the Coombe, and was admitted on the paſsword "Mr. Greene;" at this meeting, much converſation was held about their ſtrength in men and arms;—went to the Sheaf of Wheat, in Thomas-ſtreet, the Sunday after, and was admitted on the paſs-word "Mr Flail;"—there were ſixty perſons in the room, having been counted by the priſoner at the bar, who advised a diviſion of them into *Splits*, each to conſiſt of twelve; that they were accordingly ſo ſubdivided, and to each *Split* there was elected a Secretary, and Caſh-keeper; after which Finney, adminiſtered to each of the Secretaries and Treaſurers, an official oath; a man named Cooke, helping each, as ſworn, to a glaſs of punch to *waſh it down*. Witneſs recollects a propoſition made at that meeting, for a certain number to go to White's-court, in Ship-ſtreet, to No. 48, George's-ſtreet, and to a ſtone cutter's yard, in the ſame ſtreet, for the purpoſe of reporting to the next meeting, whether they were ſuitable places to favour an entrance into the Ordnance ſtores, that the arms and ammunition might be ſtolen from thence; that the report on this inſpection was, an approval of the different places, as calculated to facilitate the attempt.

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Witneſs ſtated, that on a Monday, he went to a baronial meeting, (having been appointed a caſh-keeper) accompanied by Finney; at this meeting Finney inſpected the accounts of the caſh-keepers, and received their money, ſtating, that he wanted to pay men to ſend, as already done, to France, to acquaint the government of that country, with the number of men ready to aſſiſt them, on landing in this country, and that two of the four, already ſent, had returned, and the other two would come with the enemy's fleet; for they certainly would attempt another invaſion. The priſoner alſo ſaid, that part of the money was to aſſiſt deſerters, and perſons impriſoned for being United Iriſhmen.

O'Brien depoſed, that at the meeting at the Widow Cochlan's, on the Coombe, it was appointed to attend a funeral from Pimlico, which would be accompanied by 10,000 U. Iriſhmen, who took that method to ſhew government their ſtrength, and what they were; that at this funeral, Finney was the moſt active perſon, and directed the order of marching; that after the funeral, much money was collected, and witneſs ſaw on the table a great deal of gold, ſilver, and ſome bank notes, the produce of that collection, and money paid in to Finney from other meetings. At this meeting Finney read the conſtitution of the U. I. and a paper, ſtating, that 111,000 U. I. were in the province of Ulſter alone, ready to aſſiſt the French, on landing in this kingdom At a meeting in Meath-ſtreet, witneſs depoſed, it was propoſed to put out the eyes, and cut off the tongue and hands of any perſon ſuſpected of giving information to government againſt U. I. and to aſſaſſinate thoſe of whom ſuch could be aſcertained; that it was at this meeting the guard arrived, by witneſs's direction, to arreſt the ſociety; but that Finney having poſſeſſed himſelf of the papers of the meeting, made his eſcape.—Here the witneſs's direct examination cloſed.

Croſs-examined by Mr. Curran.—He depoſed, that he came from the Caſtle – that *while there he lives there*—lived beforein the Queen's county, where he had a farm, which he ſold, and then came to Dublin to become gardener—had never been an exciſe officer, but might have gone of meſſages for an exciſe officer—never acted as ſuch himſelf—the meſſages were for money to people belonging to the walk of one Fitzpatrick, with whom he was acquainted, and who was ſick—doubted not, but *as he ſometimes had clean clothes on*, Fitzpatrick, when in his company, might have told people he was in the revenue, but never pretended himſelf to be in it, nor paſſed for an exciſe officer, *barring* he was drunk—not in the habit of drunkenneſs for ſome time back, but had been very much—was at the Red Cow once with Fitzpatrick, at the houſe of one Cavanagh, to get money—went afterwards there, and got liquor—recollected

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ſummoning him about licenſe, and compriſed for money—not drunk when this tranſaction took place—queſtioned as to his knowledge of Margaret Moore—he affected not to recollect any Margaret Moore in particular—ſaid he knew many—had once courted a Margaret Moore; and requeſted Mr. Curran to *brighten* his memory—he at length confeſſed a knowledge of Margaret Moore, and that he once had a diſpute with her—never got a decree againſt her in the Court of Conſcience, but got her taken up for money—that Margaret Moore did not pay two guineas to a bailiff, nor to him, but lodged money as ſecurity when enlarged—never was an United Man until the day he met Hyland—never ſworn one, but was always united to every *honeſt* man—doubted not but he might have been in ſocieties of United Iriſhmen before, but not to his *knowledge*—was ſworn on the 25th of April; on the 28th the magiſtrate brought him to Lord Portarlington—did not go the firſt or ſecond day, becauſe he could not get clear of the United Iriſhmen who made him drunk—there was a re-hearing between him and Mrs. Moore at the Court of Conſcience, he not being ſworn, no reſtitution was ordered to be made Mrs. Moore—heard tell of John Clark of the Blue Bell—never got money from him as an exciſe officer, but for like buſineſs, as in the caſe of Patrick Cavanagh; Clark gave him 3s. 3d. not to tell Fitzpatrick ſomething about him—got no money from Mrs. Clark—got 3s. 3d. from both—was not drunk—knew Edmund Purcell, who is now in England—it was by him he was led into *every* thing—gave Purcell a receipt about *light gold*—might have given him others, and did give him a receipt to make copper money look like ſilver, as Purcell "was a little bit *officious* to come at *ſlight eaſy things* to make his bread"—had ſeen receipts tried to turn copper into ſilver—did give Purcell a bad half crown when he gave him the receipt, "but only, as it might be, in a jocular way, to *humbug* him"—acknowleged that he was once taken up on *ſuſpicion* of ſtealing tea from a Mr. Power in Thomas-ſtreet—knows Arthur Roberts of Stradbally—heard of his having been ſummoned as a witneſs on this trial, and ſaid he would *ſettle* him if he gave him (O'Brien) a bad character; but it was only in regard to ſomething about an auction—acknowledged that when he ſo threatened Mr. Roberts, he might have been armed with a ſword and piſtols—knows George Howell, and doubts not but thro' *liquor* he might have paſſed with him for a revenue officer—did apply at Juſtice Wilſon's for a ſummons againſt Cavanagh of the Red Cow, but did not paſs for a revenue officer, for the Juſtice deſired him to bring the officer of the walk.

John Atkinſon proved having accompanied a guard to a public houſe in Meath-ſtreet, the ſign of St. Patrick, on the information of O'Brien, and having arreſted him and fifteen others.

Peter

Peter Clark, examined by Counſellor Worthington, depoſed, principally, that on the 31ſt of laſt May, having gone into a public houſe in Thomas-ſtreet, accompanied by Corporal Thompſon, who was ſince murdered near the Naul, they ſaw Finney in the tap-room, who aſked witneſs, how he was, and if he was *up* to the new plan; that he communicated that plan to the witneſs, and ſwore him; that he boaſted how well he contrived to eſcape from the meeting in Meath ſtreet with the papers of the Society, and that his eſcape was effected by being dreſſed in a green coat, and having a black ſtock on;—that while thus converſing, Thompſon went for a guard, with which returning, Finney was arreſted.

Cross examined by Mr. M'Nally—He admitted that he deſerted from the Carlow Buffs, but it was becauſe he had never received any bounty-money, nor had taken any oath of allegiance:—he alſo ſwore poſitively and repeatedly, that he was not in the Court the preceding day, altho' circumſtances were mentioned, which muſt have decided his memory on the ſubject.

Lord Portarlington, examined by Mr. Townſhend, depoſed, that about the end of laſt April, he for the firſt time, ſaw the witneſs O'Brien, who was introduced to him by Mr. Higgins, a Magiſtrate of the Queen's county.—O'Brien told his Lordſhip, that he had lately been admitted into a Society of United Iriſhmen; and learned, that under pretence of a burial, there were to be a vaſt number of perſons collected on the following Sunday for the purpoſe of inſurrection; that he alſo mentioned ſomething about an intended attack upon the Arſenal, and of the ſeduction of gentlemen's ſervants; that his Lordſhip brought O'Brien to the Speaker's chamber in the House of Commons, where an interview was had with Mr. Pelham—That O'Brien came to him a ſecond time, but his Lordſhip ſaid, he had nothing more to do with him, and to communicate any thing he had further to ſay to Mr. Cooke. O'Brien this time communicated nothing of any importance to his Lordſhip.

The evidence on the part of the Crown having been cloſed, Mr. *M'Nally* then addreſſed the Jury—He remarked upon the teſtimony that had been adduced on the part of the Crown, and contended that it was not ſuch whereby the priſoner could in the language of the ſtatute "be provably attaint of open deed"—as to the conſtruction of the word *provably*, he read the following paſſage from Coke's 3 Inſt. 12: "In this branch four things are to be obſerved, firſt this word *provablement* provably, that is, upon direct and manifeſt proofe, not upon conjecturall preſumptions, or inferences, or ſtrains of wit; but upon good and ſufficient proofe—and herein again the adverb *provablement*, provably, hath a great force, and ſignifieth

a direct and plain proofe, which word, the King, the Lords, and the Commons in Parliament did use, for that the offence was so hainous, and was so heavily and so severely punished, as none other the like, and therefore the offender must provably be attainted, which words are as forcible, as upon direct and manifest proofe—*Note:* the word is not *probably*, for then *commune argumentum* might have served, but the word is *provably*, be attainted."—

EVIDENCE *for the* PRISONER.

Margaret Moore, examined by Mr Curran, deposed, principally, that she lives in Stradbally, in the Queen's county, where she keeps a little shop, industriously earning subsistence for herself and family—that she has known O'Brien since he was born, until the time that he came to Dublin, and that she had heard much of him since, and that since his father died, and he arrived at manhood, she would not "give a groat for his oath"—that coming up to Dublin on her necessary business, as she was going over Carlisle-bridge a bailiff arrested her for 30s. at the suit of Js.O'Brien, to whom she was never indebted one penny—that she was brought to a spunging house, where O'Brien came and threatened her further if she did not give the money—that having lodged two guineas with the people of the house as security for her appearance, she summoned O'Brien to the Court of Conscience, where she obtained an order for the restitution of her money, the magistrate at the same time observing to O'Brien, "that he had rogue and villain written in his face."—Her cross-examination was long, but produced no contradiction to her direct evidence.

John Clark, examined by Mr. M'Nally, deposed, that he lives at Blue-Bell, and has resided there since he was born—is a bleacher, and keeps a public house—that O'Brien came to him one day in the character of a revenue officer, and produced a paper as an authority to make him shew his license, and threatened to run him to 17 pounds expence—that being thus frightened by O'Brien, he gave him what money he had, consisting of two shillings in silver and one shilling in brass—that he had purchased an hundred weight of ling that day, which O'Brien having seen, he expressed a desire to have some of it—that he came another time to witness, demanded half a guinea, and that he would never trouble him again—that witness had but sixpence halfpenny about him, which he gave to O'Brien, and never saw him afterwards—O'Brien was sober each time—that he never knew him until those visits under the assumed character of a revenue officer—that he gave him the money each time from fear, as he threatened to deprive him of the little property he possessed, even to the bed he lay on.

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On his cross-examination, by Mr Attorney General, he said, O'Brien came to his house, and demanding to see his licence, extorted money from him (as already recited), threatening that he would bring the army there, and take from him all he had —did not know but what he was a real officer—did not look at the paper which O'Brien produced as his authority, as he could not read—heard O'Brien was under a bad character; and came out of conscience to declare truly what he knew of him without fee or reward, and without having any personal knowledge of the prisoner. As he was going off the table a juror asked him, if O'Brien had actually said he was a revenue officer; the witness, Clarke, replied in the affirmative.

William Dunn, examined by Mr. Curran, is shopkeeper to Mr. Butler, Dame-street—knows O'Brien since a child, and, after much recollection, would not, from his general character, believe him on his oath in "the smallest matter." — Asked what he meant by "the smallest matter"—he replied, "that he would not take O'Brien's oath for the value of a penny."

Patrick Cavanagh, examined by Mr. M'Nally, is a farmer, and keeps a carrier's inn, the RedCow at Inchicore—saw James O'Brien, and believed he would know him. Here he was desired to look around and try if he was present, which he did, and was some time before he recognized him, as O'Brien kept down his head; as soon as the witness saw his face he identified him —recollected O'Brien's calling at his house, and saying he was a revenue officer, stationed on that walk—the witness observed, that he thought a Mr. Fitzpatrick was the officer; to which O'Brien replied, that he himself was lately appointed, and that Fitzpatrick was only assisting him to obtain a knowledge of the walk—O'Brien was not drunk at this time, but very sober—that he came again shortly after, went into the cellar to examine the liquor, borrowed four-pence, got his breakfast, and afterwards summoned him to appear about his licence!—Witness mentioning these circumstances to a neighbour, was told by him, that he had got into bad hands, "for Heaven only knew what O'Brien would swear, when once he got a book into his hands"— that O'Brien threatened to prosecute witness for an assault, although no such thing had ever happened, and that when O'Brien came next, he gave him all the money he had in his pocket, being two guineas and some silver, glad to get out of such bad hands on any terms.

George Howell, examined by Mr. Curran, deposed, That he is a clerk in Justice Wilson's office; that O'Brien went to the office some time since, about ten in the morning, saying, that he wanted summonses against people not licensed—on witness asking for Mr. Fitzpatrick, O'Brien replied, that he was dismissed the revenue for being a rogue, and that he O'Brien, had

had been appointed in his place—that witness told him he had not a sufficiency of summonses—on which O'Brien said he could get printed summonses from Mr. Swan—that he had a large pocket-book in his hand, which having let fall, he took it up with a confussed hurry, and thrust it in his bosom—that witness met Mr. Fitzpatrick a few days after, and expressing his concern that he had been dismissed the revenue, and telling from whom he had obtained the information, Mr. Fitzpatrick exclaimed, that O'Brien "was the greatest rogue and villain on the face of the earth!"—Witness said that O'Brien came to his office afterwards for summonses, as before, and on being upbraided with his conduct, abruptly ran away up Bishop-street.

William Byrne, in contradiction to Peter Clark, one of the witnesses for the Crown, proved that Clark was in the Court the preceding day, and

Jonathan Grey, Esq; was ready to corroborate the testimony of Mr. Byrne, but the fact having been admitted on the part of the Crown, Mr. Grey was not examined.

Bernard Cummins, sworn—gave the prisoner a most excellent character, having known him upwards of twelve years, during which time he never heard any thing prejudicial advanced against his private or his public conduct.

Peter Clark, at the desire of the Counsel for the Crown, was again brought forward, to account for his having sworn that he was not in the Court the preceding day—He said "that in so swearing, he had only made a mistake, having been puzzled;" was on the table before this trial, on business of the same kind, "such as it was"—but never *swore wrong till then*—had been a witness against one Kennedy and one Lynch.

Mr. Curran.—— My Lords, and Gentlemen of the Jury, in the early part of this trial, I thought I would have had to address you on the most important occasion possible, at this side of the grave, a man labouring for life, on the casual strength of an exhausted, and, at best, a feeble advocate.—But, Gentlemen, do not imagine that I rise under any such impressions—do not imagine that I approach you, sinking under the hopeless difficulties of my cause—I am not now soliciting your indulgence to the inadequacy of my powers, or artfully enlisting your passions on the side of my client—No, Gentlemen, but I rise with what of Law, of Conscience, of Justice, and of Constitution there yet exists within this realm at my back, and standing in front of that great and powerful alliance, I *demand* a verdict of acquittal for my client!—What is the composition of evidence?—It is a tissue which requires no strength to break through, it vanishes at the touch, and is sundered into tatters.

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The Rt. Hon. Gentlemen who stated the case in the first stage of this trial, has been so kind as to express a reliance, that the counsel for the prisoner would address the Jury with the same candour which he exemplified on the part of the Crown ; readily and confidently do I accept the compliment, the more particularly, as in my cause I feel no temptation to reject it. Life can present no situation wherein the humble powers of man are so awfully, and so divinely exerted, as in defence of a fellow creature placed in the circumstances of my client, and if any labours can peculiarly attract the gracious and approving eye of Heaven, it is when God looks down on a human being assailed by human turpitude, and struggling with practices, against which the Deity has placed his special cannon when he said—" thou shalt not bear *false witness* against thy neighbour—thou shalt do no *murder !*"

Gentlemen, let me desire you again and again to consider all the circumstances of this man's case, abstracted from the influence of prejudice and habit, and if aught of passion assumes dominion over you, let it be of that honest, generous nature, that good men must feel when they see an innocent man depending on their verdict for his life ; to this passion I feel myself insensibly yielding, but unclouded, though not unwarmed, I shall, I trust, proceed in my great duty. Wishing to state my client's case with all possible succinctness the nature of the charge admits, I am glad my learned colleague has acquitted himself on this head already, to such an extent, and with such ability, that any thing I can say will chance to be superfluous—in truth, that honesty of heart, and integrity of principle, for which all must give him credit, uniting with a sound judgment and sympathetic heart, has given to his statement all the advantages it could have derived from these qualities. He has truly said, that " the declaratory act, the 25th of Edward III. is that on which all charges of high treason are founded," and I trust the observation will be deeply engraven on your hearts. It is an act made to save the subject from the vague and wandering uncertainty of the law. It is an act which leaves it no longer doubtful whether a man shall incur conviction by his own conduct, or the sagacity of crown construction ; whether he shall sink beneath his own guilt, or the cruel and barbarous refinement of crown prosecution. It has been most aptlyc alled the BlessedAct, and oh, may the great God of Justice and of Mercy. give repose and eternal blessings to the souls of those honest men by whom it was enacted ! — By this law no man shall be convicted of high treason but on proveable evidence ; the overt acts of treason, as explained in this law, shall be stated clearly and distinctly in the charge, and the proof of these acts shall be equally clear and distinct, in order that no man's life shall hereafter depend on partial and wicked allegation.

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It does every thing for the prisoner, which he could do himself—it does every thing but uttering the verdict, which alone remains with you, and which, I trust, you will give in the same pure, honest, saving spirit, in which that act was formed. Gentlemen, I would call it an omnipotent act, if it could possibly appal the informer from our Courts of Justice, but law cannot do it religion cannot do it—the feelings of human nature, frozen in the depraved heart of the wretched informer, cannot be thawed!

No law can prevent the envenomed arrow from being pointed at the intended victim, but it has given him a shield in the integrity of a Jury—Every thing is so clear in this act, that all must understand—the several acts of treason must be recited, and proveable conviction must follow—What is proveable conviction?—Are you at a loss to know?—Do you think if a man comes on the table and says—"By virtue of my oath, I know of a conspiracy against the State, and such and such persons are engaged in it"—do you think his mere allegation shall justify you in a verdict of conviction?—A wretch coming on this table of whatsoever description, whether the noble Lord who has been examined, or the honourable judges on the bench, or Mr. James O'Brien, who shall declare upon oath, that a man bought powder, ball, and arms, intending to kill another—this is not proveable conviction, the *unlawful intention* shall be attached by cogency of evidence, and the credit of the witness must stand strong and unimpeached.

The law means not that infamous assertion or dirty ribaldry, is to overthrow the character of a man; even in these imputations flung against the victim, there is, fortunately, something detergent, that cleanses the character it was destined to befoul.

In stating the law, gentlemen, I have told you that the overt acts must be laid and proved by positive testimony of untainted witnesses, and in so saying, I have only spoken the language of the most illustrious writers on the law of England. I should, perhaps apologize to you for detaining your attention so long on these particular points, but that in the present disturbed state of the public mind, and in the abandonment of principle which it but too frequently produces, I think I cannot too strongly impress you with the purity of legal distinction, so that your souls shall not be harrowed with those torturing regrets which the return of reason would bring along with it, were you, on the present occasion, for a moment to resign it to the subjection of your passions; for these, though sometimes amiable in their impetuosity, can never be dignified and just but under the controul of reason. The charge against the prisoner is two-fold—compassing and imagining the King's death, and adhering to the King's enemies. To be accurate on this head

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is not less my intention than it is my interest: for if I fall into errors, they will not escape the learned Counsel who is to come after me, and whose detections will not fail to be made in the correct spirit of Crown prosecutions.

Gentlemen, there are no fewer than 13 overt acts, as described, necessary to support the indictment; these, however, it is not necessary to recapitulate. The learned Counsel for the Crown has been perfectly candid and correct in saying, that if any of them support either species of treason charged in the indictment, it will be sufficient to attach the guilt. I do not complain, that on the part of the Crown it was not found expedient to point out which act or acts went to support the indictment; neither will I complain, gentlemen, if you fix your attention particularly on the circumstance. Mr. Attorney General has been pleased to make an observation, which drew a remark from my colleague, with whom I fully agree, that the atrocity of a charge should make no impression on you; it was the judgment of candour and liberality, and should be your's—nor though you should more than answer the high opinion I entertain of you, and though your hearts betray not the consoling confidence which your looks inspire, yet do not disdain to increase your stock of candour and liberality, from whatsoever source it flows; and though the abundance of my client's innocence may render him independent of its exertions, your country wants it all. You are not to suffer impressions of loyalty, or an enthusiastic love for the sacred person of the King, to give your judgments the smallest biass. You are to decide from the evidence which you have heard, and if the atrocity of the charge were to have any influence with you, it should be that of rendering you more incredulous to the possibility of its truth.

I confess, I cannot conceive a greater crime against civilized society, be the form of government what it may, whether monarchical, republican, or, I had almost said, despotic, than an attempt to destroy the life of the person holding the executive authority—the Counsel for the Crown cannot feel a greater abhorrence against it than I do; and happy am I, at this moment, that I can do justice to my principles, and the feelings of my heart, without endangering the defence of my client, and that defence is, that your own hearts would not feel more reluctant to the perpetration of the crimes with which he is charged, than the man who there stands at the bar of his country, waiting until you shall clear him from the foul and unmerited imputation, until your verdict, sounding life and honour to his senses, shall rescue him from the dreadful fascination of the informer's eye. The overt acts in the charge against the prisoner are many, and all apparently of the same nature, but which, notwithstanding, admit of very material distinction;

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this want of candour I attribute to the base imposition of the prosecutor on those who brought him forward. You find at the bottom of the charge a foundation stone attempted to be laid by O'Brien—the deliberations of a Society of *United Irishmen*, and on this are laid all the overt acts. I said the distinction was of great moment, because it is endeavoured to be held forth to the public—to all Europe, that at a time like this of peril and of danger, there are, in one province alone, 111,000 of your countrymen combined for the purpose of destroying the King, and the tranquility of the country which so much depends on him—an assertion which you should consider of again and again, before you give it any other existence than it deserves from the attainting breath of the informer, if nothing else should, to induce that consideration but the name of IRISHMEN, the honours of which you share, so foully, and, as I shall demonstrate, so falsely aspersed.

If you can say that one fact of O'Brien's testimony deserves belief, all that can from thence be inferred is, that a great combination of mind and will exist on some public subject—what says the written evidence on that subject?—What are the obligations imposed by the Test-oath of the Society of *United Irishmen?*—Is it unjust to get rid of religious differences and distinctions?—Would to God it were possible!—Is it an offence against the State, to promote a Full, Free, and Adequate Representation of ALL the People of Ireland, in Parliament?—If it be, the text is full of its own comment, it needs not mine.—As to the last clause, obliging to secrecy—Now, gentlemen of the Jury, in the hearing of the Court, I submit to the opposite Counsel this question; I will make my adversary my arbiter—Taking the test-oath, as thus written, is there any thing of treason in it?—However objectionable it may be, it is not treasonable—I admit there may be a colourable combination of words to conceal a real bad design, but to what evils would it not expose society, if in this case, to *suppose* were to *decide?*—An high legal authority thus speaks on this subject, "Strong indeed, must the evidence be, which goes to prove that any man can mean by words, any thing more, than what is conveyed in their ordinary acceptation." If the test of any particular community were an open one; if, like the London Corresponding Society, it was to be openly published, then, indeed, there might be a reason for not using words in their common application—but subject to no public discussion, at least, not intended to be so—why should the proceedings of those men, or the obligation by which they are connected be expressed in the phraseology of studied concealment?

If men meet in secret, to talk over how best the French can invade this country, to what purpose is it that they take an engagement different in meaning?—Common sense rejects the idea!

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Gentlemen, having stated these distinctions, I am led to the remaining divisions of the subject you are to consider—I admit, that, because a man merely takes this obligation of Union, it cannot prevent his becoming a traitor, if he pleases; but the question for you to decide on, would then be, whether every man who takes it, must necessarily be a traitor?—Independent of that engagement, have any superadded facts been proved against the prisoner?—What is the evidence of O'Brien? What has he stated?—Here, Gentlemen, let me claim the benefits of that great privilege, which distinguishes trial by jury in this country from all the world.

Not twelve men just emerging from the dust and cobwebs of a study, abstracted from human nature, or only acquainted with its extravagancies; but twelve men conversant with life, and practised in those feelings which mark the common and necessary intercourse between man and man—Such are you, Gentlemen.—How, then, does Mr. O'Brien's tale hang together?—Look to its commencement. He walks along Thomas-street, in the open day (a street, not the least populous in this city), and is accosted by a man, who, without any preface, tells him, he'll be murdered before he goes half the street, unless he becomes an *United Irishman!*—Do you think this a probable story?—Suppose any of you, gentlemen, be a United Irishman, or a Free Mason, or a Friendly Brother, and that you met me walking *innocently* along, just like Mr. O'Brien, and "meaning no harm," would you say, "Stop, Mr. Curran, don't go further, you'll be murdered before you go half the street, if you do not become a U.Irishman, a Free Mason, or a Friendly Brother." Did you ever hear so coaxing an invitation to felony as this?—"Sweet Mr. James O'Brien, come in and save your precious life, come in and take an oath, you'll be murdered, before you go half the street!—Do, sweetest, dearest, Mr. James O'Brien, come in, and do not risk your valuable existence?"—What a loss had he been to his King, whom he loves so marvellously!

Well, what does poor Mr. O'Brien do?—Poor, dear man! he stands petrified with the magnitude of his danger—all his members refuse their office—he can neither run from the danger, nor call out for assistance; his tongue cleaves to his mouth, and his feet incorporate with the paving stones—it is in vain that his expressive eye, silently implores protection of the passenger; he yields at length, as greater men have done, and resignedly submits to his fate—he then enters the house, and being led into a room, a parcel of men make faces at him—but mark the metamorphosis—well may it be said that "Miracles will never cease,"—he who feared to resist in open air, and in the face of the public, becomes a Bravo when pent up in a room, and environed by sixteen men, and one is obliged

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to bar the door, while another swears him, which, after some resistance, is accordingly done, and poor Mr. O'Brien becomes an United Irishmen, for no earthly purpose whatever, but merely to save his sweet life!—But this is not all, the pill so bitter to the percipiency of his loyal palate, must be washed down, and lest he should throw it off his stomach, he is filled up to the neck with beef and whiskey!—What further did they do?—Mr. O'Brien, thus persecuted, abused and terrified, would have gone and lodged his sorrows in the sympathetic bosom of the Major, but to prevent him even this little solace, they made him drunk—the next evening they used him in the like barbarous manner, so that he was not only sworn against his will, but, poor man, he was made drunk against his inclination!—Thus was he besieged with *united* beef-stakes and whiskey, and against such potent assailants not even Mr. O'Brien could prevail!

Whether all this whiskey that he has been forced to drink has produced the effect or not, Mr. O'Brien's loyalty is better than his memory. In the spirit of loyalty he becomes prophetic, and told to Lord Portarlington the circumstances relative to the intended attack on the Ordnance stores full three weeks before he had obtained the information through moral agency—O! honest James O'Brien!—honest James O'Brien!—Let others vainly argue on logical truth and ethical falshood, but if I can once fasten him to the ring of perjury, I will bait him at it, until his testimony shall fail of producing a verdict, although human nature were as vile and monstrous in you as she is in him!—He has made a mistake! but surely no man's life is safe if such evidence were admissible; what argument can be founded on his testimony, when he swears he has perjured himself, and that any thing he says must be false?—I must not believe him at all, and by a paradoxical conclusion, suppose, against "the deep damnation" of his own testimony, that he is an honest man!

Another of the prisoner's counsel having here suggested something to Mr. Curran, he continued,—"My learned friend supposed me to be mistaken, and confounding the evidences of O'Brien and Clark, but I am not; I advert to what O'Brien said to Lord Portarlington, respecting the attack on the arsenal.—Strongly as I feel my interest keep pace with those of my client, I would not defend him at the expence of truth; I seek not to make O'Brien worse than he is; whatever he may be, God Almighty convert his mind! — May his reprobation—but, I beg his pardon, let your verdict stamp a due currency on his credit; thatwill have more force than any casual remarks of mine. How this contradiction in Mr. O'Brien's evidence occured, I am at no loss to understand. He started with an intention of informing against some person, no matter against whom, and

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whether he ever saw the prisoner at the time he gave the information to Lord Portarlington, is a question; but none, that he fabricated the story for the purpose of imposing on the honest zeal of the law officers of the Crown.

Having now glanced at a part of this man's evidence, I do not mean to part with him entirely. I shall have occasion to visit him again, but before I do, let me, gentlemen, impress upon your minds the observation which my colleague applied to the laws of high treason, that if they are not explained on the statute book, they are explained on the hearts of all honest men; and, as St. Paul says, "tho' they know not the law they obey the statutes thereof." The essence of the charge submitted to your consideration, tends to the dissolution of the connection between Ireland and Great Britain.

I own, it is with much warmth, and self-gratulation, that I feel this calumny answered by the attachment of every good man to the British Constitution. I feel, I embrace its principles; and when I look on you, the proudest benefit of that Constitution, I am relieved from the fears of advocacy, since I place my client under its sacred shade. This is not the idle sycophancy of words—It is not crying "Lord! Lord! but doing the will of my Father who is in Heaven."—If my client were to be tried by a jury of Ludgate-hill shop-keepers, he would, e'er now, be in his own house. * The law of England would not suffer a man to be cruelly butchered in a court of justice. The law of England recognizes the possibility of villains thirsting for the blood of their fellow creatures; and the people of Ireland have no cause to be incredulous of the fact. Thus it is, that in England *two* witnesses are essential to the proof of high treason; and the poorest wretch that crawls on British ground, has this protection between him and those *vampyres* who crawl out of their graves in search of human blood. If there be but *one* witness, there is the less possibility of detecting him—he the less fears any detection of his murderous tale, having only infernal communication between him and the author of all evil; and, when on the table, which he makes the altar of his sacrifice, however common men may be affected at the sight of the innocent victim, it cannot be supposed that the prompter of his perjury will instigate him to retribution—this is the law in England, and God forbid, that Irishmen should so differ, in the estimation of the law, from Englishmen, that their blood is not equally worth preserving.

I do not, Gentlemen, apply any part of this observation to you; you are Irishmen yourselves, and, I know you will act proudly and honestly. Why the law of England renders two wit-

* Alluding to the trials of Mr. Hardy, Horne Tooke, &c. in London, who were all cleared by their juries—These were the men called "acquitted felons" by Mr. Windham.

witnesses necessary, and one witness insufficient, to take away the life of a man on a charge of high treason, is founded on the principles of common sense, and common justice, for, upless the subject were guarded by this wise prevention, every wretch who could so pervert the powers of invention, as to trump up a tale of treason and conspiracy, would have it in his power to defraud the Crown into the most abominable and afflicting acts of cruelty and oppression.

Gentlemen of the Jury, tho' from the evidence which has been adduced against the prisoner, they have lost their value, yet, had they been necessary, I must tell you, that my client came forward under a disadvantage of great magnitude, the absence of two witnesses, very material to his defence—I am not now at liberty to say, what, I am instructed, would have been proved by *May* and *Mr. Roberts*—Why is not Mr. Roberts here?—Recollect the admission of O'Brien, that he threatened to *settle* him, and you will cease to wonder at his absence, when if he came, the dagger was in preparation to be plunged into his heart—I said Mr. Roberts was absent; I correct myself—No! in effect he is here; I appeal to the heart of that obdurate man, what would have been his testimony, if he had dared to venture a personal evidence on this trial?—Gracious God!—Is a tyranny like this to be borne with, where law is said to exist! Shall the horrors which surround the informer, the ferocity of his countenance and the terrors of his voice, cast such a wide and appalling influence, that none dare approach and save the victim which he marks for ignominy and death!

Now, Gentlemen, be pleased to look at the rest of O'Brien's testimony; he tells you there are 111,000 men in one province, added to 10,000 of the inhabitants of the metropolis, ready to assist the object of an invasion—What! Gentlemen, do you think there are so many in one province—so many in your city, combined against their country? At such a time as this, do you think it a wise thing to say on the evidence of the abominable O'Brien, that if the enemy was to invade this country, there are 111,000 men ready to run to his standard? But this is not the most appalling view of the question—For its importance, and its novelty, this is the most unprecedented trial in the annals of this country. I recollect none bearing any affinity to it, save that of the unhappy wanderer, Jackson; and premising that I mean not the smallest allusion to the conduct of public measures in this country, are you—I ask you, seriously, *are you* prepared to embark your respectable characters, in the same bottom with this *detestable INFORMER?*—Are you ready on such evidence, to take away, one by one, the lives of an hundred thousand men, by prosecutions in a Court of Justice? Are you prepared, when O'Brien shall come forward against 10,000 of your fellow citizens, to assist him in digging the graves,

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which he has destined to receive them one by one? No! could your hearts yield for a moment to the suggestion, your own reflections would vindicate the justice of God, and the insulted character of man; you would fly from the secrets of your chamber and take refuge in the multitude, from those "compunctious visitings," which meaner men could not look on without horror. Do not think I am speaking disrespectfully of you when when I say, that while an O'Brien may be found, it may be the lot of the proudest among you, to be in the dock instead of the jury box;—how then, how then on such an occasion would any of you feel, if such evidence as has been heard this day were adduced against you.

The application affects you—you shrink from the imaginary situation—remember then the great mandate of your religion, and "do unto all men as you would they should do unto you"—why do you condescend to listen to me with such attention? why so anxious, if even from me any thing should fall tending to enlighten you on the present awful occasion? it is, because, bound by the sacred obligations of an oath, your heart will not allow you to forfeit it. Have you any doubt, that it is the object of O'Brien to take down the prisoner for the reward that follows? Have you not seen, with what more than instinctive keenness this blood-hound has pursued his victim? how he has kept him in view from place to place, until he hunts him through the avenues of the court to where the unhappy man stands now, hopeless of all succour, but that which your verdict shall afford. I have heard of assassination by sword, by pistol, and by dagger, but here is a wretch who would dip the Evangelists in blood—if he thinks he has not sworn his victim to death, he is ready to swear without mercy and without end; but oh! do not, I conjure you, suffer him to take an oath; the arm of the murderer should not pollute the purity of the Gospel; if he will swear, let it be on the knife the proper symbol of his profession!—Gentlemen, I am reminded of the tissue of abomination, with which this deadly calumniator, this O'Brien, has endeavoured to load so large a portion of your adult countrymen. He charges 100,000 Irishmen with the deliberate cruelty of depriving their fellow creatures of their eyes, tongues, and hands!—Do not believe the infamous slanderer—If I were told that there was in Ireland one man who could debase human nature, I should hesitate to believe that even O'Brien were he.

I have heard the argument made use of, that, in cases of a very foul nature, witnesses cannot be found free from imputation; this admitted in its fullest extent, it does not follow, that such evidence is to be accredited without other support. In such cases strong corroboration is necessary, and you would be the most helpless and unfortunate men in the world, if you were

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under the necessity of attending to the solitary testimony of such witnesses. In the present prosecution, two witnesses have been examined, for the respectable character of Lord Portalington must not be polluted by a combination with O'Brien; if his Lordship had told exactly the same story with O'Brien, it could not, however, be considered as corroborating O'Brien, who might as easily utter a falsehood to L. Portarlington as he did here; but how much more strongly must you feel yourselves bound to reject his evidence, when appealing to his Lordship, he is materially contradicted, and his perjury established. With respect to Clark, he fixes no corroborative evidence whatever to the overt acts laid in the indictment. In endeavouring to slide in evidence of a conspiracy to murder Thompson, what might be the consequence if such a vile insinuation took possession of your minds — I am not blinking the question, I come boldly up to it—there is not the most remote evidence to connect the fate of Thompson with the present case, and nothing could shew the miserable paucity of his evidence more, than seeking to support it on what did not at all relate to the charge. Five witnesses, as if by the interference of Providence, have discredited O'Brien to as many facts.

What did the simple and honest evidence of John Clarke of Blue-bells amount to against O'Brien? It attached the double crime of artifice and perjury, and added robbery to the personification. See how in Dublin there are at this moment thousands and ten thousands of your fellow citizens, anxiously waiting to know, if you will convict the prisoner on the evidence of a wilful and corrupt perjurer, whether they are, each in his turn, to feel the fatal effects of his condemnation, or whether they are to find protection in the laws from the machinations of the informer.—[Mr. Curran having been reminded to observe on the recipe for coining]— No! continued he, let him keep his coining for himself; it will not pass in common with other pieces—it suits him well, and is the proper emblem of his conscience *copper-washed*—Would you let such a fellow as this into your house as a servant, under the impressions which his evidence must make on your minds?

If you would not take his service, in exchange for wages, would you take his perjury in exchange for the life a fellow creature?—How will you feel, if the *Assignats* of such evidence pass current for human blood! How will you bear the serrated and iron fangs of remorse, gnawing at your hearts, if, in the moment of abandonment, you suffer the victim to be massacred even in your arms?—But has his perjury stopt here?—What said the innocent countryman, Patrick Cavanagh?—Pursuing the even tenor of his way in the paths of honest industry, he is in the act of fulfilling the decree of his Maker; he is earning

ing his bread by the sweat of his brow, when this villain, less pure than the Arch-fiend, who brought the sentence of laborious action on mankind, enters the habitation of peace and humble industry, and, not content with dipping his tongue in perjury and blood, robs the poor man of two guineas!—Can you wonder that he crept into the hole of the multitude, when the witness would have developed him?—Do you wonder, that he endeavoured to shun your eyes?

At this moment, even the bold and daring villainy of O'Brien stood abashed; he saw the eye of Heaven in that of an innocent and injured man, perhaps the feeling was consummated by a glance from the dock—his heart bore testimony to his guilt, and he fled for the same!—Gracious God! have you been so soiled in the vile intercourse, that you will give him a degree of credit, which you will deny to the candid and untainted evidence of so many honest men?—But I have not done with him yet—while an atom of his vileness hangs together, I will separate it, lest you should chance to be taken by it.—Was there a human creature brought forward to say he is any other than a villain?—Did his Counsel venture to ask our witnesses, why they discredited him?—Did he dare to ask on what they established their assertions?—No—By this time it is probable Mr. O'Brien is sick of investigation. You find him coiling himself in the scaly circles of his cautious perjury, making anticipated battle against any one who should appear against him—but you see him sink before the proof.

Do you feel, gentlemen, that I have been wantonly aspersing this man's character?—Is he not a perjurer, a swindler, and that he is not a murderer, will depend on you. He assumes the character of a King's Officer, to rob the King's people of their money, and afterwards when their property fails him, he seeks to rob them of their lives!—What say you to his habitual fellowship with baseness and fraud? He gives a recipe instructing to felony, and counterfeiting the King's coin, and when questioned about it, what is his answer?—Why truly, that it was "only a light, easy way of getting money"—"only a little bit of a humbug."—Good God! I ask you, has it ever come across you, to meet with such a constellation of infamy!

Beside the perjury, Clark had nothing to say, scarcely ground to turn on—He swears he was not in the Court yesterday, what then?—Why, he has only perjured himself!—Well, call little Skirmish up again—Why it was but a mistake! a little puzzled or so, and not being a Lawyer, he could not tell whether he was in Court or not!—Mr. Clark is a much better evidence than my Lord Portarlington—his Lordship, in the improvidence of truth, bore a single testimony, while Clark,

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wisely providing against contingences, swore at both sides of the gutter, but the lesser purjurer, is almost forgotten in the greater. No fewer than five perjuries are established against the *loyal* Mr. O'Brien, who has been "united to every honest man"—if indicted on any one of these, I must tell you, gentlemen, that he could not be sworn in a Court of justice; on the testimony of five witnesses, on his own testimony, he stands indicted before you; and, gentlemen, you must refuse him that credit, not to be squandered on such baseness and profligacy. The present cause takes in the entire character of your country, which may suffer in the eyes of all Europe, by your verdict.—This is the first prosecution of the kind brought forward to view.—It is the great experiment of the *Informers of Ireland*, to ascertain how far they can carry on a traffick in human blood!—This Cannibal Informer, this Dæmon, O'Brien, greedy after human gore, has fifteen other victims in reserve, if, from your verdict, he receives the unhappy man at the bar!—Fifteen more of your fellow-citizens are to be tried on his evidence!—Be you then their saviours, let your verdict snatch them from his ravenning maw, and interpose between yourselves and endless remorse!

I know, gentlemen, I would but insult you, if I were to apologize for detaining you thus long; if I have apology to make, to any person, it is to my client, for thus delaying his acquittal. — Sweet is the recollection of having done justice in that hour, when the hand of death presses on the human heart!—Sweet is the hope which it gives birth to!—From you I demand that justice for my client, your innocent and unfortunate fellow-subject at the bar, and may you have for it, a more lasting reward, than the perishable crown we read of which the antients placed on the brow of him, who saved in battle the life of a fellow-citizen.

If you should ever be assailed by the hand of the *informer*, may you find an all-powerful refuge in the example which you shall set this day; earnestly do I pray that you may never experience what it is to count the tedious hours in captivity, pining in the damps and gloom of the dungeon, while *the wicked one* is going about at large, "seeking whom he may devour."—There is another than a human tribunal, where the best of us will have occasion to look back on the little good we have done. In that awful trial, oh! may your verdict this day, assure your hopes, and give you strength and consolation in the presence of an ADJUDGING GOD.

[Here ended Mr. Curran's Address, and to say that the Reporter has done it justice, is a presumption which he disclaims. To keep pace with the rapid flow of his eloquence, is impossible; the hearer stands in astonishment and rapture, viewing the majesty of its course.—He who most admires it, is least able to record it.]

Mr. *Solicitor General* followed Mr. Curran, but as he dwelt chiefly on the points and explanations of law, already so often repeated, we deem it unnecessary to lay them before our readers again.

The Hon. *Judge Chamberlaine* charging the Jury, spoke in substance as follows:

"Gentlemen of the Jury, the charge against the Prisoner, has been truly stated, to be of a nature the most atrocious, inasmuch as an attempt to overturn the Government of a Country, by disturbing the peace and security of society, endangers the life and liberties of every individual, but it has also been truly said, that in proportion to the atrocity of a crime, should be the evidence brought forward to establish it—two species of High Treason have been laid in the indictment, on these I do not think it necessary to observe at length, the Counsel on both sides, seem well agreed on the subject; these two are, compassing the King's death, and adhering to his enemies.—Every man of plain sense must know what is meant by the latter, [here his Lordship instanced as explanatory, the cases of Lord Preston, Doctor Hensil, and the Rev. Mr. Jackson.]—The completion of the design is not necessary to constitute the guilt. If we were to wait for the event, in such a case, it would be idle to talk of punishment.

The only count in the indictment for you to consider, is, the adhering to the King's enemies. In support of the others, Mr. Baron Smith, is of opinion with me, there has no proof whatsoever, been advanced—the witness, O'Brien, swears to several facts going to prove adherence to the King's enemies, but before I state a particle of his evidence, I must give you this caution, that if you believe he has wilfully and deliberately committed perjury on this trial, you are to reject every part of his testimony, if you are of opinion that you would find him guilty, if indicted before you for perjury, you must reject him altogether—*for atrocious as is the crime of High Treason, it is better twenty traitors should escape, than one innocent man be deprived of his life.*

An approver comes forward, the plan which he discloses, may be true, or it may be of his own formation, but f convicted in the smallest instance of wilful and corrupt perjury, I do not see how any man can say, that it does not create a doubt of his testimony, and you have been truly told, that "doubt in the present case is acquittal."

Having recapitulated the evidence of O'Brien, his Lordship said, that it was observable to the Court, that there were other witnesses to corroboration, which the Counsel for the Crown did not bring forward, and therefore the presumption was, that they would not strengthen the prosecution. His Lordship

strongly observed on the contradictions to the evidence of O'Brien, and his own studied evasions of the truth. His Lordship observed, that the handing Purcel a bad half crown with the recipe for colouring brass, was a sufficient elucidation of his intentions. With respect to Clark, what he called a mistake, was such as no considerate man would make, and that it rendered his evidence altogether a nullity.

His Lordship concluded, by this observation—"It is a dangerous experiment, and which I never will countenance, to admit the evidence of a witness, who, on trial, commits wilful perjury. There is, it is true, some corroborating testimony against the Prisoner, but to make him a traitor, and fix on him a design of aiding and abetting the King's enemies, I see no evidence whatever, and I trust in God, that perjury will not find a suffrage in your verdict, or in the laws of this country."

The Hon. Baron Smyth expressed his entire approbation in the charge that had been delivered by Mr. Justice Camberlaine.

After an absence of about ten minutes, the Jury returned a verdict, NOT GUILTY!

On Thursday the 18th, Mr. Finney was again arraigned on an indictment for administering unlawful oaths, and, for want of prosecution, acquitted.

THE

TRIAL

OF

HENRY AND JOHN SHEARES

FOR

HIGH TREASON.

COURT OF OYER AND TERMINER.

ON the 21st of May 1798, Henry Sheares and John Sheares Esqrs. were arrested and committed to gaol on a charge of High Treason—and, on the 26th of June, at a court held at the Sessions House for the City and County of Dublin, by virtue of a special commission of Oyer and Terminer, composed of Lord Carleton, Hon. Alexander Crookshank, Hon. Michael Smith, Hon. Denis George, and the Hon. Robert Day, the Grand Jury found an Indictment for High Treason against the two Sheares, of which the following is an abstract:——

FIRST COUNT—That the said Henry Sheares and John Sheares, not regarding the duty of their allegiance, falsely, wickedly, and traiterously, did compass, imagine, and intend the King, their supreme and lawful Lord, off and from his royal state, crown, title, and government of this his kingdom of Ireland, to depose and deprive, and the said Lord the King to kill, put to death, and murder.

Overt Acts—1. That they the said Henry and John Sheares did conspire with others to raise rebellion and war, and to procure great quantities of arms and ammunition for the purpose of rebellion and war, and to procure armed men to raise and prosecute war—2. That they with others did conspire to dethrone the King—3. That they did conspire to overturn the government, and by force to change the Constitution—4. That the said Henry and John did consult and conspire with others as to the means of procuring arms and raising an army to overturn the government—5. That they did meet and conspire with others as to the means of deposing the King—6. That they did become members of, and associate with, a party or society called *United Irishmen*, with intent to overturn the government and dethrone the King—7. That they endeavoured to persuade Capt. John Warnford Armstrong to assist in raising rebellion, and also endeavoured to persuade him to induce some of the militia to desert and join in rebellion

That

—8. That they did, with intent to dethrone the King, endeavour to perſuade the ſaid Armſtrong, &c.—9. Nearly ſimilar to the laſt—10. That the ſaid Henry and John did commit to writing a plan for ſeizing the camp at Lehaunſtown, the artillery at Chapelizod, and the Caſtle at Dublin, together with the Lord Lieutenant and Privy Council—11. Nearly ſimilar to the eighth—12. That they did procure a plan for ſeizing the camp, &c. to be written with intent to carry the ſame into execution—13. That they did compoſe and write a certain proclamation (ſee proclamation marked No. II.) for the purpoſe of exciting the people to war and rebellion—14. That they did procure a proclamation, &c. to be written—15. That they did induce a number of armed men to aſſemble at Clondalkin in the County of Dublin in order to prepare for war againſt the King—16. That they did aſſemble and conſpire together with others, and receive returns and accounts of the arms, numbers, and names of men and officers to be employed in raiſing rebellion, &c.

SECOND COUNT—That the ſaid Henry and John Sheares, with intent to ſubvert the government and conſtitution, unlawfully and traiterously were adhering to and aiding and comforting the perſons exercising the powers of government in France, and the men of France, under the government of the ſaid perſons, then being enemies of the King.

The ſame *Overt Acts* were ſet forth in ſupport of the ſecond count, with an additional one, to wit, the 17th, That they became members of a ſociety of *United Iriſhmen*, for the purpoſe of aiding and aſſiſting the French.

WEDNESDAY, *July* 4, 1798.

Henry Sheares and John Sheares were brought to the Bar, and arraigned upon the indictment that had been found againſt them.

Mr. *M'Nally* begged their Lordſhips to indulge the priſoners with ſome little time, as their Counſel had not all come into Court; and expreſſed a wiſh to adviſe with his colleagues on an important objection to the indictment, which went to ſhew that the whole proceedings were *coram non judice*.

After a delay of half an hour, the priſoners' counſel not appearing, the Court ſaid the cauſe muſt go on.

Mr. *M'Nally* then roſe and moved to quaſh the indictment, on the ground that one of the Grand Jury was not legally qualified to ſerve, that he was an alien, a Frenchman born; he ſtated, that the fact had but lately come to his knowledge, that the Grand pannel having been called over in the abſence of the priſoners, and at a time when they had no counſel aſſigned them, they had it not in their power to take advantage of it at an earlier ſtage of the proceedings—"I am at a loſs (ſaid he) to know how the fact is to be enquired into whether by collateral iſſue or otherwiſe—I am not aſhamed to own my ignorance in this reſpect—perhaps it may come in the ſhape of a plea, to which the Counſel for the Crown may demur."

The Court over-ruled the motion; and ſaid that if the counſel had any plea they muſt put it in.

Their

Their Lordships waited some time for the plea to be drawn and engrossed—In the interval Mr. Curran and Mr. Plunket came into Court, and apologized for their absence—The following Plea was then put in and read:—

"And the said John and Henry Sheares, in their proper persons, come, and having heard the indictment aforesaid read, and protesting, that they are not guilty of the premises charged in the said indictment, for plea, nevertheles say, that they ought not to be compelled to answer to the said indictment, because they say, that *John Decluzeau* in the caption of the said indictment mentioned, was born in the kingdom of France, and is an alien, and is not a natural born and liege subject of our said Lord the King, and this they are ready to verify:—Wherefore the said John and Henry Sheares, pray judgment, if the Court of our said Lord the King here, will further proceed on the indictment aforesaid against them, and that they may be dismissed from the Court hereof and upon the premises.

JOHN P. CURRAN,
LEO. M'NALLY,
W. C. PLUNKET."

On the part of the Crown, the following Replication was filed:—

"And for answer to the said plea of the said John and Henry Sheares, John Toler, Esq. the Solicitor General of our said Lord the King, who in this behalf for the said Lord the King prosecutes, says, the said John Decluzeau is not an alien in manner and form as the said John Sheares and Henry Sheares alledge, and this he prays may be enquired of by the country. And the said John Toler, the Solicitor General of the Lord the King who in this behalf prosecutes, protesting, that the said John Decluzeau is not an alien, as by the said John Sheares and Henry Sheares above alledged, yet for further answer to the said plea of John and H. Sheares, says, that the said John Decluzeau is, and at the time of the caption of said judgment, was, and is, and then by force of the statutes in such case made and provided, was, and should be deemed and adjudged a natural and liege subject of our said Lord the King, to wit, at the parish of *Saint Michael* the Archangel, in the county of the said city of Dublin, and this he is ready to verify as the Court shall award. And the said John Toler, the Solicitor General of the said Lord the King, who prosecutes as aforesaid, protesting, that the said John Decluzeau is not an alien, as by the said John Sheares and Henry Sheares above alledged, yet for further answer to the said plea of the said John Sheares and Henry Sheares, says, that after the 12th day of April, in the 14th year of the reign of our late Sovereign Lord Charles the Second, King of Great Britain and so forth, to wit, on the 1st day January, in the year of our Lord 1770, the said John Decluzeau, being a

per-

person born out of the dominions of the present Lord the King, was a person of the Protestant religion, to wit, at the said parish of *Saint Michael* the Archangel, in the said county of the city of Dublin, and did then and there, after his arrival with his stock, substance, and family in this kingdom, take the oaths of allegiance and supremacy, to, and of our said Lord the King, and did then and there, take the oath of abjuration, and make and subscribe the declaration according to the force of the statutes in such case made and provided. And this he is ready to verify, as the Court shall award. And therefore prays judgment, whether the Court will not proceed upon the said indictment. *

JOHN TOLER."

Mr. Curranthen moved the Court to adjourn, in order to give time to consider of the case, as it was in its nature so entirely novel; but the Court refused to do so—He then moved to quash the replication on the ground, that in criminal cases the parties were not permitted to plead double †.

Lord *Carleton*.—In civil cases certainly, the right of pleading double arises from the act of Parliament.—As to the objection you now make, you must avail yourself of it in some other way. We will not quash the replication upon motion.

The

* The following are abstracts of the statutes upon which the replication was founded:—

14 and 15 Car. 2, c. 13 Recites, that the late troubles and cruel wars having wasted and despoiled the kingdom, &c. then enacts, that all alien merchants, traders, artizans, manufacturers, or mariners, who now inhabit, or hereafter within seven years shall transport themselves, their families, and property to Ireland, with intent there to reside, shall, after taking the oath of allegiance and supremacy, &c. before &c. be deemed, adjudged, and reputed his Majesty's liege, free, and natural subjects of the kingdom of Ireland, and be adjudged, reputed, and taken in every respect, condition, and degree, to all intents, constructions, and purposes natural and liege subjects of Ireland, as if they had been or were born within that kingdom, *and that they may enjoy all laws, customs, &c. implead and be impleaded, &c. purchase and enjoy lands and goods, &c. by inheritance or otherwise, &c* —Then follows a clause exempting such aliens from payment of excise for household expences or provisions.

4 Geo. 1, c. 9, s 1 revives the former so far as the same concerns or relates to the encouragement of Protestant strangers, and makes it perpetual, save the clause exempting them from the payment of excise.—The second section provides, that instead of the oath of allegiance and supremacy specified in the above act, the oath of allegiance and supremacy, the declaration against transubstantiation, and the oath abjuring the Pretender's title, as set forth in the 3 W. and M. should be taken.

19 and 20 Geo. 3, c. 29 enacts, That all foreign merchants, traders, &c. on taking an oath, &c. shall be deemed liege, free, and natural subjects, &c. The second section provides, That no person so naturalized shall be enabled to serve in parliament, &c. nor to hold any *office of trust*, civil or military, in this kingdom,"

† See 5 Bac. Abr. 447—4 Term Rep. 701—2 Stra. 908.

The following rejoinder and demurrer were then filed on the part of the Prisoners:—

"And the said John and Henry Sheares, as to the said first plea, so as above pleaded by his Majesty's said Solicitor, and which he hath prayed may be enquired of by the country, do the like. And as to the second and third pleas so as above aforesaid pleaded, the said John and Henry Sheares say, that the same and the matters therein contained are not sufficient in point of law, to put the said John and Henry Sheares to answer the said indictment, and this they are ready to verify, when and where, and so forth; whereupon they demur in law thereto, and pray the judgment of the Court of our said Lord the King, whether they shall be bound to answer to the said indictment.

A. FITZGERALD, *Agent.*

JONN P. CURRAN,
W. C. PLUNKET,
LEO. M'NALLY."

"And the said John Toler, the Solicitor General of our said Lord the King, who for our said Lord the King in this behalf prosecutes, says, that the second and third pleas, and the matter therein contained, are sufficient in law to put the said John Sheares and Henry Sheares, to answer to the said indictment, and this he is ready to verify, and prays judgment of the Court thereupon, and so forth. *JOHN TOLER.*"

Mr. CURRAN ——My Lords, it is my duty to suggest such reasons, as occur to me in support of the demurrer filed here on part of the prisoners.—My Lords, the law of this country has declared, that in order to the conviction of any man, not only of any charge of the higher species of criminal offences, but of any criminal charge whatsoever, he must be convicted upon the finding of two juries; first, of the Grand Jury, who determine upon the guilt in one point of view; and secondly, by the corroborative finding of the Petty Jury, who establish that guilt in a more direct manner; and it is the law of this country, that the Jurors, who shall so find, whether upon the Grand, or whether upon the Petty inquest, shall be *probi & legales homines omni exceptione majores.* They must be open to no legal objection of personal incompetence; they must be capable of holding freehold property; and in order to have freehold property, they must not be open to the objection of being born under the jurisdiction of a foreign Prince, or owing allegiance to any foreign power. Because the law of this country, and indeed the law of every country in Europe, has thought it an indespensable precaution, to trust no man with the weight or influence which territorial possession may give him contrary to that allegiance, which ought to flow from every man having property in the country.—This observation is emphatically forcible in every branch of the criminal law; but in the law of treason, it has a de-

degree of force and cogency, that fails in every inferior class of offence; because the very point to be enquired into in treason is the nature of allegiance.—The general nature of allegiance may be pretty clear to every man. Every man, however unlearned he may be, can easily acquire such a notion of allegiance, whether natural and born with him, or whether it be temporary and contracted by emigration into another country—he may acquire a vague untechnical idea of allegiance for his immediate personal conduct. But I am warranted in saying, that the Constitution does not suppose, that any foreigner has any direct idea of allegiance but what he owes to his original Prince. The constitution supposes and takes for granted, that no foreigner has such an idea of our peculiar and precise allegiance, as qualifies him to act as a Juror, where that is the question to be enquired into; and I found myself, upon this known principle, that though the benignity of the English law has in many cases, where strangers are tried, given a jury half composed of foreigners and half natives, that benefit is denied to any man accused of treason, for the reason I have stated, because, says Sir W. Blackstone, "aliens are very improper judges of the breach of allegiance."*—A foreigner is a most improper judge of what the allegiance is, which binds an English subject to his constitution. And therefore upon that idea of utter incompetency in a stranger, is every foreigner directly removed and repelled from the possibility of exercising a function that he is supposed utterly unable to discharge. If one Frenchman shall be suffered to find a bill of indictment between our Lord the King and his subjects, by a parity of reasoning, may twenty-three men of the same descent be put into the box, with authority to find a bill of indictment.—By the same reason that the Court may communicate with one man whose language they do not know, may they communicate with twenty-three natives of twenty-three different countries and languages. How far do I mean to carry this?—Thus far:—That every statute, or means by which allegiance may be shaken off, and any kind of benefit or privilege conferred upon an emigrating foreigner, is forever to be considered by a court of justice with relation to that natural incompetency to perform certain trusts, which is taken for granted and established by the law of England. I urge it with this idea;—that whether the privilege is conferred by letters patent, making the foreigner a denizen, or whether by act of parliament, making him as a native subject, the letters patent or act of parliament should be construed *secundum subjectam materiam*, and a court of justice will take care, that no privilege be supposed to be granted incompatible with the original situation of the party to whom, or the constitution of the country in which it is conferred. Therefore, my Lords, my cli-

* 4 Black. Com. 352.

clients have pleaded, that the bill of indictment to which they have been called upon to answer, has been found, among others by a foreigner, born under a foreign allegiance, and incapable of exercising the right of a juror, upon the grand or the petty inquest. That is the substance of the plea in abatement.—The Counsel for the Crown have replied, and we have demurred to the second and third parts of the replication.

My Lords, I take it to be a rule of law, not now to be questioned, that there is a distinction in our statute laws;—some are of a public, some of a private nature. That part of the legislative edict, which is considered as of a public nature, is supposed to be recorded in the breasts of the King's Judges. As the King's Judges, you are the depositories and records of the public law of the country. But wherever a private indulgence is granted, or a mere personal privilege conferred, the King's Judges are not the depositories of such laws, though enacted with the same publicity; you are not the repositories of deeds or titles which give men franchies or estates, nor of those statutes which ease a man of disability, or grant him a privilege.

With regard to the individual to whom they relate, they are mere private acts, muniments, or deeds, call them by what name you please; they are to be shewn, as private deeds to such courts as it may be thought necessary to bring them forward. Therefore, if there be any act of parliament by which a man is enabled to say, he has shaken off the disability, which prevented him from intermeddling in the political or judicial arrangement of the country; if he says he is no longer to be considered as an alien, he must shew that act specially to the court in his pleading. The particular authority whether by letters of denization, or act of parliament, must be set forth, that the court may judge of them—that if it be by act of parliament, the court may see, whether he comes within the provisions of the act. This replication does no such thing. The second and third parts were intended to be founded upon the statute of Charles II. and also, I suppose, upon the subsequent statute made to give it perpetuity, with certain additional requisites.

The statute of Charles recites, that the kingdom was wasted by the unfortunate troubles of that time, and that trade had decreased for want of merchants. After thus stating generally, the grievances which had afflicted the trade and population of this country, and the necessity of encouraging emigration from abroad, it goes on and says, that strangers may be induced to transport themselves and families to replenish the country if they may be made partakersof the advantages and free exercise of their trades without interruption and disturbance. The grievance was the scarcity of men; the remedy was the encouragement of foreigners to transport themselves, and the encouragement given was such a degree of protection as was neces-

cessary to the full exercise of their trades in the dealing, buying, and selling, and enjoying the fullest extent of personal security. Therefore it enacts, that all foreigners of the Protestant religion, and all merchants, &c. who shall within "the term of seven years," transport themselves to this country, shall be deemed and reputed a natural born subject, "and may implead and be impleaded, and prosecute and defend suits." The intention was, to give them protection for the purposes for which they were encouraged to come here; and therefore the statute instead of saying generally, they shall be "subjects to all intents and purposes," specifically enumerates the privileges they shall enjoy. If the Legislature intended to make them subjects "to all intents and purposes," it had nothing more to do than say so.—But not having meant any such thing, the statute is confined to the enumeration of the mere hospitable rights and privileges to be granted to such foreigners, as come here for special purposes. It states, that he may implead and be answered unto—that he may prosecute and defend suits. Why go on, and tell a man, who is "to all intents and purposes," a natural born subject, that he may implead and bring actions?—I say, it is to all intents and purposes absurd, and preposterous. If *all* privileges be granted in the first instance, why mention *particular* parts afterwards?—A man would be esteemed absurd, who by his grant gave a thing under a general description, and afterwards granted the particular parts. What would be thought of a man who gave another his horse, and then said, "I also give you liberty to ride him when and where you please?"—What was the case here?—The Government of Ireland said, we want men of skill and industry—we invite you to come over—our intention is, that if you be Protestants, you shall be protected, but you are not to be Judges, or Legislators, or Kings—we make an act of parliament, giving you protection and encouragement to follow the trades for your knowledge in which we invite you. You are to exercise your trade as a natural born subject.—How?—With full power to make a bargain, and enforce it—we invest you with the same power, and you shall have the same benefit as if you were appealing to your own natural forum of public justice.—You shall be here as a Frenchman in Paris, buying and selling the commodities appertaining to your trade.

Look at another clause in the act of parliament which is said to make a Legislator of this man, or a Juror to pass upon the life and death of a fellow-subject—no, not a fellow-subject, but a stranger.—It says, "you may purchase an estate, and you may enjoy it, without being a trustee for the Crown."—Why was that necessary, if he were a subject "to all intents and purposes?"

This

This statute had continance for the period of seven years only: That is, it limited the time in which a foreigner might avail himself of its benefits to seven years. The stat. 4 Geo. 1. revives it and makes it perpetual.—I trust I may say, that whenever an act of parliament is made, giving perpetuity to a former act, no greater force or operation can be given to the latter, than would have been given to the former, had it been declared perpetual at the time of enaction. An act of that kind is merely to cure the defect of continuance; therefore it does no more than is nec ssary to that end. Then how will it stand?—Thus:—tha any man, who within seven years after the passing the act of Charles II. performing the requisites therein mentioned, shall have the privileges thereby granted, forever thereafter. The Court would assume the office of legislation, not of construction, if they inferred, or supplied by intendment, a longer period than seven years:—There is nothing in the subsequent act changing the term of seven years, limited in the former; it is not competent to a court of justice to alter or extend the ope ation of a statute by the introduc ion of clauses not to be found in it.—It is the business of the legislature to enact laws; o the court to expound them.

It is worthy of observation, my Lords, that this subsequent statute has annexed certain explicit conditions to be performed by the person who is to take the benefit of the preceding act; for it is prov ed that no person shall have the benefit of the act, unless h take the several oaths appointed to be taken by the latter; among which is the oath against the Pretender, which is not stated in the replication.

There is a ircumstance in the latter act, which with regard to the argument, is extremely strong to shew, that the legislature did not intend to gran the universal franchise and privilege to all intents and purposes. It revives every part of the form r, save that part exempting aliens from the payment of excise—Will it be contended, that an alien should be considered as a natural born subject "to all intents and purposes," and yet be exempt from the payment of excise?—it is absurd, and impossible.

Put it in another point of view.—What is an act of naturalization?—It is an encroachment upon the common law rights, which every man born in this country has in it: those rights are encroached upon and taken away by a stranger. The statute therefo e should be construed with the rigour of a penal law. The Court to be sure will see, that the stranger has the full bene it ntended for him by the statute; but they will not give him a , privilege inconsistent with the rights of the natural born su ects, or incompatible with the fundamental principles of the Constitution, into which he is admitted, and I found myself upon this, that after declaring that he shall be

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considered as a natural born subject, the act states such privileges only as are necessary to the exercise of trade and the enjoyment of property.

Therefore, it comes back to the observation just now made. Is not any man pleading a statute of naturalization, by which he claims to be considered as a natural born subject, bound to set forth a compliance with all the requisites pointed out by that statute? He is made a native to a certain extent upon complying with certain conditions; is he not bound to state that compliance? Here he has not stated them. But I go further; I say, that every condition mentioned in the statute of Charles should be set forth in the second part of the replication; that he came with an intent of settling; that he brought his family and his stock, that he took the oaths before the proper magistrates, and after a minute statement of every fact, he should state the additional oath required by the statute of Geo. I.

But, my Lords, a great question remains behind to be decided upon. I know of no case upon it. I do not pretend to say, that the industry of other men may not have discovered a case. But I would not be surprized, if no such case could be found. If since the history of the administration of justice in all its forms in England, a stranger had not been found intruding himself into its concerns; if through the entire history of our courts of justice, an instance was not to be found of the folly of a stranger interfering upon so awful a subject, as the breach of allegiance between a subject and his King. My Lords, I beg leave upon this part to say, that it would be a most formidable thing, that a Court of Justice would pronounce a determination big with danger, if they say, that an alien may find a bill of indictment involving the doctrine of allegiance. It is permitting him to intermeddle in a business of which he cannot be supposed to have any knowledge. Shall a subject of the Irish Crown be charged with a breach of his allegiance upon the saying of German, an Italian, a Frenchman, or a Spaniard? Can any man suppose any thing more monstrous or absurd, than that of a stranger being competent to form an opinion upon the subject. I would not form a supposition upon it. At a time when the Generals, the Admirals, and the Captains of France are endeavouring to pour their armies upon us, shall we permit their petty detachments to attack us in judicial hostility? Shall we sit inactive, and see their skirmishers take off our fellow-subjects by explosion in a jury room?

When did this man come into this country?—Is the raft upon which he floated now in Court?—What has he said upon the back of the bill?—What understanding had he of it?—If he can write more than his own name, and had wrote *ignoramus* upon the back of the indictment, he might have written truly; he might say, he knew nothing of the matter. He says

says, he is naturalized—I am glad of it—You are welcome to Ireland, Sir—You shall have all the privileges of a stranger, independent of the invitation by which you came—If you sell, you shall recover the price of your wares;—you shall enforce the contract—If you purchase an estate, you shall transmit it to your children if you have any—if not, your devisee shall have it. But you must know, that in this Constitution, there are laws binding upon the Court as strongly as upon you!—the statute itself which confers the privileges you enjoy, makes you incapable of discharging offices—Why? Because they go to the fundamentals of the Constitution, and belong only to those men who have an interest in that Constitution transmitted to them from their ancestors."—Therefore, my Lords, the foreigner must be content; he shall be kept apart from the *judicial* functions;—in the extensive words of an act of parliament, he shall be kept from "all places of *trust* whatsoever." If the act had been silent in that part, the Court would notwithstanding be bound to say, that it did not confer the power of filling the high departments of the state.—The alien would still be incapable of sitting in either house of parliament.—He would be incapable of advising with the King, or holding any place of constitutional trust whatever. What? Shall it be said, there is no trust in the office of a grand juror?—I do not speak lightly of the sacred office confided to your Lordships of administering justice between the Crown and the subject; or between subject and subject:—I do not compare the office of a grand juror to that. But, in the name of God, with regard to the issues of life and death—with regard to the consequences of imputed or established criminality, what difference is there, in the importance of the Constitution, between the Juror who brings in a verdict, and the Judge who pronounces upon that verdict, the sentence of the law? Shall it be said, that the former is no place of *trust?* What is the place of trust meant by the statute? It is not merely giving a thing to another or deposisting for safe custody—It means constitutional trust—the trust of executing given departments, in which the highest confidence must be reposed in the man appointed to perform them. It means not the trust of keeping a paltry chattel—it means the awful trust of keeping the secrets of the State, and of the King.—Look at the weight of the obligation imposed upon the juror—look at the enormous extent of the danger, if he violate or disregard it.—At a time like the present—a time of war—What, is the trust to be confided to the conscience of a Frenchman?—But I am speaking for the lives of my clients, and I do not choose, even here, to state the terms of the trust, lest I might furnish as many hints of mischief, as I am anxious to furnish arguments of defence.—But shall a

French-

Frenchman at this moment be entrusted with those secrets upon which your sitting upon that Bench may eventually depend? —What is the enquiry to be made?—Having been a pedlar in the country, is he to have the selling of the country, if he be inclined to do so?—Is he to have confided to him the secrets of the State?—He may remember to have had a first allegiance, that he was sworn to it—He might find civilians to aid his perfidious logic, and to tell him, that a secret communicated to him by the humanity of the country which received him, might be disclosed to the older and better matured allegiance sworn to a former power?—He might give up the perfidious use of his conscience to the integri y of the older title. Shall the power of calling upon an Irishman to take his trial before an Irish Judge, before the country, be left to the broken speech, the *lingua franca* of a stranger coming among you, and saying, "I was naturalized by act of parliament, and I cannot carry on my trade, without dealing in the blood of your citizens."—He holds up your statute as his protection, and flings it against your liberty, claiming the right of exercising a judicial function, feeling, at the same time, the honest love of an older title of allegiance. It is a love which every man ought to feel, and which every subject of this country would feel, if he left this country to-morrow, and were to spend his last hour among the Hottentots of Africa.

I do trust in God, there is not a man who hears me, who does not feel, that he would carry with him to the remotest part of the globe, the old ties which bound him to his original friends, his country, and his King:—I do, as the advocate of my clients, of my country—as the advocate for *you*, my Lords, whose elevation prevents you from the possibility of being advocates for yourselves—for your children, stand up and rely upon it, that this act of parliament has been confined to a limited operation—it was enacted for a limited purpose, and will not allow this meddling stranger to pass upon the life, fame, or fortune of the gentlemen at the bar—of me their advocate—of you, their Judges—or of any man in the nation. It is an intrusion not to be borne.

My Lords, you deny him no advantage that strangers ought to have. By extending the statute, you take away a right from a native of the country, and you transfer one to an intermeddling stranger. I do not mean to use him with disrespect; he may be a respectable and worthy man; but whatever he may be, I do, with humble reliance upon the justice of the Court, deprecate the idea of communicating to him that high, awful, and tremendous privilege of passing judgment upon our lives, and of expounding the law in cases of treason; it may become a precedent, that strangers may be called upon to judge of breaches of allegiance between a subject and his sovereign.

Mr.

Mr. *Prime Sergeant* then addressed the Court—He adverted to the acts of parliament referred to in the replication, and exerted his ingenuity to shew, that John Decluzeau, the person objected to, having been naturalized according to those statutes, was in every respect qualified to serve on a Grand Jury; he compared the statutes of Charles and 4 Geo. I. with several others on the same subject, and contended, that the expressions clearly manifested an intention in the minds of the legislators to extend the rights and privileges of natural-born subjects to certain aliens, in every respect whatever, except in the instances particularly specified, and that the right of serving on juries was not within the exception.

Mr. *Plunket*, in reply, cited and relied upon 2 Hawk. c. 25 s. 16, 26, and 28, to shew that this was the proper manner of taking advantage of such vicious proceedings, occasioned by exceptionable persons serving on the Grand Jury, who found the indictment. He then replied to what had fallen from the Prime Sergeant as to the construction of the statutes, and concluded by again urging the arguments that had been advanced by Mr. Curran.

Lord *Carleton*.——The question has been ably and eloquently argued, so as to convince us of the propriety of our rule, not to allow any further time.

This is a replication not put in by Mr. *Decluzeau* himself, apprized of all the circumstances and possessed of all the documents necessary to the establishment of his right. It is a replication by the Counsel for the Crown upon a plea put in by the prisoners' Counsel.—I wish not to be understood as giving any opinion, supposing the question to have arisen merely upon the objection of Mr. *Decluzeau's* being an alien, how far it could be taken advantage of by way of plea. I do not wish to shake any authority upon this subject; but to have it considered, that I have not made up my mind upon the point, and that I give no opinion upon it. That a person being an alien is a good cause of challenge, I think is well founded; but whether it can be taken advantage of by way of plea I reserve my opinion.

That a juror is outlawed may be taken advantage of by plea in avoidance of the indictment, but whenever such plea is given by the common law, or depends upon the statute of the 11 Hen. 4. c. 9. is a question of some difficulty, that statute was passed about the same time with the case mentioned by Hawkins—and from a manuscript note which I have made in the margin of my Hawkins, I perceive the statute received the Royal assent in *quindena Hilarii*, which was on the 27th or 28th of January, and might perhaps have preceded the decision referred to by Hawkins.

At

At the same time, there is considerable weight in what has been mentioned, that the Prisoners were not present at the time the Jury was sworn, and that may perhaps support the decision in Hawkins to give them a right of pleading.

But assuming for a moment, that this matter may be taken advantage of by way of plea, it is necessary to consider the pleading here.—Issue is joined upon the first part of the replication.—The second part is defective, as referring matter of law to the Court, without any fact to support t; therefore we throw that out of the case. As to the third, my brethren agree with me, and we cannot better express ourselves, than by adopting the argument of Mr. Prime Sergeant. It appears to us that these acts of parliament cannot have the limited construction, which has been contended for by the prisoner's Counsel—that they must be sufficiently extensive to take in cases like the present; and the nature of the restrictions proves, what the operations of the clauses would have been if these restrictions had not been enacted.

With regard to "offices of trust"—they must allude to such as are previously enumerated, viz. offices held under the Crown.

But it is said that sufficient matter has not been stated in the replication to shew, that this Juror comes within the provisions of the statutes. We think the Counsel for the Crown have stated sufficient matter for that purpose. The oaths of allegiance, supremacy, and abjuration, and the declaration are stated to have been taken, and the oath respecting the Pretender is part of the oath of abjuration. Therefore, we are all of opinion, that the demurrer must be over-ruled and judgment be given for the Crown—and a *respondeat ouster* awarded.

The prisoners then pleaded Not Guilty in the usual form, and the trial was postponed by the reason of the absence of their witnesses until the 12th of July.

THURSDAY, *July* 12, 1798.

This day the Court (composed of Lord Carleton, Mr. Justice Crookshank, and Mr. Baron Smith) met agreeably to adadjournment, and the prisoners, Henry and John Sheares, being put to the bar, a jury was impannelled and sworn to try them both together.

Mr. *Attorney General*,* in opening the case, expressed his sincere regret, that the first act of his professional duty in the situation in which he was then placed, was to prosecute, two gentlemen whose characters and standings in life were so high as

* In the interval since the last sitting of the Court, Mr. Toler, Solicitor General, was appointed Attorney General in the room of Mr. Wolfe, promoted to be Lord Chief Justice of the King's Bench, with the title of Baron Kilwarden.

as that of the prisoners at the bar ;—yet it was a duty of which the public have a right to demand, a firm, and an honest discharge. Mr. Attorney then concisely explained to the jury the law of High Treason as applicable to the present case, and stated what he had been instructed to say would appear to be the evidence ; and after reading the proclamation (marked No. II) he concluded thus : "Who is there that can read this bloody scroll, and not pronounce judgment upon the intention and imagination of the heart which composed it ! and whilst I thus behold it me thinks I have in palpable form before me, the sanguinary author penning it with his bloody dagger in one hand, and pointing in triumph to the revolutionary tribunal and guillotine with theother. And yet, gentlemen, it is not unworthy the observation of my countrymen, that there may be found in this paper some precepts, that, if well applied, it would be well to inculcate, when it denounces vengeance against treachery and cowardice.—I admire the wisdom of the laws of those countries, which put traitors and cowards in the same class of public criminals ; and I am free to say, that the man that is traitor or coward enough not to take that unequivocal part which becomes him at such a time as this, deserves the severest punishment and the execration of his country."

EVIDENCE *for the* CROWN.

John Warnford Armstrong called—Mr. Curran suspecting that this witness did not believe in a God, or a future state of responsibility, by the permission of the Court, put the following question to him :—

"In the presence of this awful Court, I ask you to declare, whether you believe in God, and in a future state of rewards and punishments ?"—Answer, "I do."

He was then sworn and deposed, That he was a native of Ireland, about 27 years of age, that he was a Captain in the King's County Militia ;—that being acquainted with Mr. Byrne the bookseller, he used frequently to go to his shop for the purpose of purchasing the new publications as they came out—that on the 10th of May 1798, being in Mr. Byrne's shop, he proposed introducing him to Mr. Henry Sheares ;—as to which, he immediately consulted with Capt. Clibborn ; the result of which consultation was, that he should give Mr. Sheares a meeting, which he did.—On the introduction, Byrne said to Henry, "all I can say to you Mr. Sheares is, that Capt. Armstrong is a *true brother*, and you may depend upon him."—Henry observed, that what he wished to say to this deponent, he wished to say in the presence of his brother—He went away in a little while, and shortly after, John Sheares was introduced to this deponent, who said to this deponent, that he knew his

principles perfectly well, that he was emboldened by that knowledge, and the pressure of affairs induced him for the good of the cause, to make himself known to him, and to shew him how the cause could be benefited by his joining in action as he knew this deponent had by inclination.—This deponent replied "that he would serve him to the utmost of his power,"—John then said, that the rising was very near, that they could not wait for the French, but had determined upon "a home exertion," and that the principle manner in which this deponent could assist them, was by seducing the soldiers, and bringing about the King's county militia, and consulting with him about taking the camp at Lehaunstown where this deponent was quartered—For the purpose of bringing about the soldiers, he (John) would recommend to this deponent to practice upon the non-commissioned officers and privates, who were of the Roman Catholic Religion, as they were most likely to think themselves aggrieved —John then appointed the Sunday following to meet at his house.

This deponent in the morning of that day, went agreeably to appointment to his house; and found only Henry at home, with whom he had a conversation nearly of the same import as that which he had had with John on the former day—Henry apologized for his not returning to Byrne's, for that there was a committee sitting that day, which it was necessary one of them should attend; but what was the business of the committee, this deponent did not learn.—John came in and said to this deponent, in presence of Henry, that he should be fearful of committing himself with any men of his regiment, but if he knew any, he should then do what he could to act in concert with them; he said it was the intention of the United Irishmen to seize the camp, the artillery at Chapelizod, and the City of Dublin in one night; that there was to be one hour and an half between the seizing of the camp and Dublin, and an hour between seizing Dublin and Chapelizod, so that the news of both might arrive at the same time—he said, if this deponent would call at 11 at night, he would give him the names of some men in the regiment to which he belonged.

At the evening meeting, John told this deponent that he had not been able to obtain the names, but that a man would call upon him for a pass, and that he might be conversed with freely.—No person called; this deponent therefore went to Mr. Sheares to learn the reason—John said, he wished to introduce him to a gentleman with whom he might consult and advise during his absence, for that he must go down and organize Cork; that the rising in Cork and other places was to be so arranged, that the news would reach Dublin at the same time —John appointed a meeting on the next day, for the purpose of introducing this deponent to the gentleman spoken of.

On

On the 17th, this deponent met the two Sheares at their house; soon after Mr. Lawless came in, to whom he was introduced—Lawless said, he would procure the names of two United Irishmen of the regiment to which this deponent belonged, and leave them with Mr. Sheares, ready when he should call again in the evening.—This deponent called in the evening, and John gave him a note of introduction to Sergeant Conners, and mentioned the name of Pat. Fennan, which two persons he understood to be the men before alluded to.

On the 20th, this deponent again met the two brothers, and had some further conversations on the before-mentioned subject; and on the morning after they were arrested.—This deponent saw John after his arrest, who asked him if his papers had been seized?—He answered, he did not know—John replied, he hoped not, for there was one among them which would commit him.—It was the constant practice of this deponent, after each interview, to note what passed in writing, and to communicate the business to Col. L'Estrange (who commanded the regiment to which he belonged) and to Capt. Clibborn, and sometimes to Lord Castlereagh and Mr. Cooke —This deponent had read Paine's Rights of Man and Age of Reason, but never told any person they contained his political or religious Creed, nor did he ever tell any one that he disregarded the obligation of an oath, or that he did not believe in a future state of rewards and punishments. This deponent, under Sir James Duff on his way to Blackmore Hill, where there was a party of rebels, met on the road three men with green cockades; one they shot, another they hanged, and the third they flogged and made a guide of.

Here the note given by Mr. J. Sheares to Capt. Armstrong for Serjeant Conners was read:—

"Arthur Hill comps. to Sergt. Conner, takes the liberty of introducing a particular friend of his to him; my friend will disclose his sentiments to you, which you may with every propriety intrust him with, answering every question he proposes.

"I'll see you on Sunday next."

(Directed)

Sergt. Conner, *(and on the back was also this name)*
5 Bride-st. PAT. FENNAN."

Andrew Kearney swore, That he was in company with John Sheares in May last, at a house in Werburgh-street, Dublin, where there were five or six persons, amongst whom was a man by the name of Corr, and another by the name of M'Clure, who were both Colonels in the United Irishmen's army—That the business of the meeting was to ascertain the number of United Irishmen in Dublin, that some one of the company named 1100; other numbers were mentioned by the dif-

different persons present, but the witness cannot recollect them; that their returns were written down, but he does not recollect to have seen John Sheares write.

Alderman Alexander being sworn, deposed, That he went to the house of Messrs. Sheares on the 21st May last, for the purpose of arresting them; that he placed guards in the front and rear of the house to prevent their escape, and then rapped at the door in the usual way, and a woman looked out of a window, and soon after the door was opened, and they went in and found only Henry at home; on his being told that all his papers must be searched for and seized, he appeared not at all alarmed, but replied there was no paper in his house that could injure him. —This deponent found the paper marked No. II. in a small writing box upon the table in the parlour or study; the box was shut down but not locked, nor any way fastened; that while they were at the door, Henry had full time to have destroyed this or any other paper.

John Dwyer sworn, said, That he had often seen both Henry and John Sheares write, and that he believed the papers marked No. I. II. III. were the hand-writing of John.

Sheriff Archer swore, That he found the letter marked No. I. in John Cormick's private office on the 20th May last; that Cormick had since fled.

Major Sirr swore, That he arrested John Sheares at the house of Surgeon Lawless, and found upon his person the paper marked No. III.

The written documents were then read:—

LETTER—No. I.

"I beg leave to introduce the bearer Mr. C. to your confidence, as gentlemen on whose honour you may perfectly rely.

Yours, J. S.

"Conner did not come to town as I expected yesterday."

(*Directed*) "Capt. Armstrong."

PROCLAMATION—No. II.

"*Irishmen*,

["Your Country is free; all those Monsters who usurped its government to oppress its people are in our hands, except such as have]

"Your country is free and you are about to be avenged [already] that vile government which has so long and so cruelly oppressed you, is no more; some of its most atrocious monsters have already paid the forfeit of their lives, and the rest are in our hands [waiting their fate]. The National Flag, *the Sacred Green*, is at this moment flying over the ruins of despotism, and that Capital, which, a few hours past [was the scene] witnessed the debauchery [the machinations] plots and crimes

crimes of your Tyrants, is now the citadel of triumphant Patriotism *and Virtue*. Arise then, United Sons of Ireland; arise like a great and powerful people, determined to [live] be free or die, arm yourselves by every means in your power, and rush like lions on your foes; consider, that [in disarming your enemy] for every enemy you disarm, you arm a friend, and thus become doubly powerful; in the cause of Liberty, inaction is cowardice, and the coward shall forfeit the property he has not the courage to protect, let his arms be seized and transferred to those gallant [Patriots] *spirits* who want, and will use them; yes, Irishmen, we swear by that eternal Justice, in whose cause you fight, that the brave Patriot, who survives the present glorious struggle, and the family of him who has fallen, or shall fall hereafter in it, shall receive from the hands of a grateful nation, an ample recompence out of [those funds] that property which the crimes of our enemies [shall] have forfeited into its hands, and his name [too] shall be inscribed on the national record of Irish Revolution, as a glorious example to all posterity; *but we likewise swear to punish robbery with death and infamy.*

"We also swear, that we will never sheath the sword until every [person] being in the country is restored to those equal Rights, which the God of Nature has given to all men—Until an order of things shall be established, in which no superiority shall be acknowledged among the citizens of Erin, but that [which] of virtue and talent [shall entitle to.]

"As for those degenerate wretches who turn their swords against their native country, the national vengeance awaits them: Let them find no quarter, unless they shall prove their repentance by *speedily* deserting, exchanging from the standard of Slavery, for that of Freedom, under which their former errors may be buried, and they may share the glory and advantages that are due to the Patriot bands of Ireland.

"Many of the military feel the love of Liberty glow within their breasts, and have [already to] joined the national standard; receive [those] with open arms, such as shall follow so glorious an example, they can render signal service to the cause of freedom, and shall be rewarded according to their deserts. But for the wretch who turns his sword against his native country, let the national vengeance be visited on him, let him find no quarter, two other crimes demand. Rouse all the energies of your souls; call forth *all* the merit and abilities which a vicious government consigned to obscurity, and under the conduct of your chosen leaders march with a steady step to a victory; heed not the glare of [a mercenary] hired Soldiery, or *Aristocratic yeomanry*, they cannot stand the vigorous shock of Freemen, [close with them man to man, and let them see what vigour the cause of freedom can.] Their

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trappings and their arms will soon be yours, and the detested government of England to which we vow eternal hatred, shall learn, that the treasures [she, it] *they* exhausts on [their mercenary] its accoutered slaves for the purpose of butchering Irishmen, shall but further enable us to turn their swords on its devoted head.

"Attack them in every direction by day and by night, avail yourselves of the natural advantages of your country, which are innumerable, *and with which you are better acquainted than they;* where you cannot oppose them in full force, constantly harass their rear and their flanks; cut off their provisions and magazines, and prevent them as much as possible from uniting their forces; let whatever moments you cannot [pass in] devote to fighting for your country, be [devoted to] passed in learning how to fight for it, or preparing the means of war, for war, war alone must occupy every mind, and every hand in Ireland, until its long oppressed soil be purged of all its enemies.

"Vengeance, Irishmen, vengeance on your oppressors—Remember what thousands of your dearest friends have perished by their [murders, cruel plots] *merciless orders*—Remember their burnings, their rackings, their military massacres, their torturings, and their legal murders.—Remember ORR."

[NOTE—The words in *Italics* were interlined—Thefe between Crotchets were ftruck acrofs with a pen.]

No. III produced by Major Sirr, and proved by Mr. Dwyer, to be the hand-writing of Mr. John Sheares:

Bourke -	800	Mullins.
Garraty -	1200	M'Donald.
Howard -	1400	Lieut. Hobbes.
Castleknock -	700	Capt. Crofton.
Balruddery -	2000	Dr. Wilkinson.
Rathdown -	1000	
Nethercross	1000	M'Lune.
	8100	

Capt. Clibborn deposed, That Capt. Armstrong had communicated to him and Col. L'Estrange the conversations he from time to time had with the Sheares, as has been before related by Armstrong.

Benjamin Rikey was sworn, but his testimony developed nothing worthy of notice——The evidence for the Crown here closed.

Mr. *Ponsonby* and Mr. *Plunket* then spoke to the evidence—They contended, that the prisoners could not be guilty of compassing of the death of the King in Ireland, because compassing or imagining the death of the King, meant not merely the destruction or abolition of the Kingly office, but the natural and

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actual dissolution of the King's mortal frame by violent means, which could not be effected in Ireland where the King never was; that this species of treason must be solely confined to England, or to that country where the King actually resided.—They also argued, that inasmuch as the indictment contained only one other charge of adhering to the French, then being the enemies of the King, and as the testimony only went to prove that the Sheares adhered to certain rebels within Ireland, and not any foreign enemies, there was therefore no evidence to establish the crime of which they stood charged—That it was the privilege of the subject to have his crime plainly alledged against him, and defined according to the known laws of the land, and the crime so defined must be supported by evidence strictlyapplicable to it; so that no man should be convicted but by a judgment *secundum allegata et probata.* They then concluded with some remarks upon the consistency and general complexion of the testimony that had been adduced on behalf of the Crown.

EVIDENCE *for the* PRISONERS.

Charles R. Shervington swore, That he was a Lieutenant in the 41st Regiment, and was acquainted with Capt. Armstrong (who was his nephew) from his childhood; that he had often been in his company, and had conversation with him; that when speaking with Armstrong of the French revolution, &c. he said he did not wish a Kingly Government, that if there was not another executioner in the kingdom for George III. but himself, he would be one, and pique himself upon being so. This deponent told him, he was a damned fellow, and ought to give up his commission, leave the army and go over to France. This deponent recollects at another time being at a bookseller's, where he used frequently to meet his nephew Armstrong; that he handed him Paine's Rights of Man, saying "read that, it is my creed," This deponent thrust the book into the fire, and replied to his nephew "that he should be served so."

Thomas Drought deposed, That he was well acquainted with Capt. Armstrong from his infancy, that he heard him in his most serious and calm moments declare, that after death the soul dropped into a state of eternal sleep or non-entity, and that he utterly disbelieved in a state of future rewards and punishments. This deponent went to see Armstrong while he was confined to his room with the wound he had received in the foot in Col. Walpole's engagement; that after talking of the numbers killed, &c. Armstrong said, that there were two or three caught at a distsnce from the field of action, that one of them was hanged outright, (which they agreed was no good way to make him confess) that another was suspended, and he Armstrong, cut him down, and ordered him 25 lashes, and

when

when he received about eight, he called out with vociferation, that he would give information; that he then led them on, and said the person who was hanged could have given the same information, though he suffered himself to be hanged. This deponent asked him, whether he expected any punishment, and though he did not expect it from government, yet that there was an all-powerful Being who would punish him—Armstrong replied "you know my opinion long ago upon that subject."

Robert Bride, a Barrister, swore, That he had heard Capt. Armstrong, in his most serious moments, speak contemptuously of the obligation of an oath.

Charles Graydon, Barrister, deposed, That he had often heard Capt. Armstrong, when speaking on political subjects, make use of the most violent and unqualified Republican expressions!

John Boardman being sworn, said, That he was Lieutenant of the Lawyers Corps, that he has known the Messrs. Sheares these seven or eight years, that he has heard them wish for a Parliamentary Reform; once, in particular, he heard John regret, that reform did not take place as the best mode of preventing a Revolution.

Chichester St. Leger deposed, That he had been acquainted with the Messrs. Sheares since their childhood, and that their general character was the very best he could conceive any men to possess.

Thomas Leach to the same effect.

Thomas Casey, Barrister, swore, That he had been well acquainted with both the Sheares for some time, John in particular he had lived in habits of intimacy with, whom he admired, esteemed, and respected. Their general moral character was as good, as great, and as high as any men he ever knew.

Here the case closed.

Mr. CURRAN.——My Lords, before I address you or the Jury, I would wish to make one preliminary observation—It may be a request, it may be an observatiou only—for myself, I am indifferent—but I feel I am now unequal to the duty—I am sinking under the weight of it.

We all know the character of the jury——The interval of their separation must be short, if it should be deemed necessary to separate them. I protest, I have sunk under this trial. If I must go on, the Court must bear with me—The jury may also bear with me:—I will go on until I sink.—But after a sitting of 16 hours, with only 20 minutes interval, in these times I should hope, it would not be thought an obstrusive request, to hope for a few hours interval of repose, or rather for recollection.

Lord *Carleton*.—What say you, Mr. Attorney General?

Mr.

Mr. *Attorney General.*—My Lords, I feel such public inconvenience from adjourning cases of this kind, that I cannot consent. The counsel for the Prisoners cannot be more exhausted than those for the prosecution—If they do not choose to speak to the evidence, we shall give up our right to speak, and leave the matter to the Court altogether — They have had two speeches already, and leaving them unreplied to is a great concession.

Lord *Carleton.*—We would be glad to accommodate as much as possible. I am as much exhausted as any other; but we think it better to go on.

Mr. CURRAN.—Gentlemen of the jury. It seems, that much has been conceded to us.—God help us !—I do not know what has been conceded to me—if so insignificant a person may have extorted the remark—Perhaps it is a concession, that I rise in such a state of mind and body—of collapse and deprivation, as to feel but a little spark of indignation raised by the remark, that much has been conceded to the counsel for the prisoners—much has been conceded to the prisoners !—Almighty, and merciful God, who lookest down upon us, what are the times, to which we are reserved, when we are told, that much has been conceded to prisoners who are put upon their trial at a moment like this—of more darkness and night of the human intellect, than a darkness of the natural period of 24 hours —that public convenience cannot spare a respite of a few hours to those who are accused for their lives, and that much has been conceded to the advocate, almost exhausted in the poor remark which he has endeavoured to make upon it,

My countrymen,—I do pray you, by the awful duty which you owe your country;—by that sacred duty which you owe your character, (and I know how you feel it)—I do obtest you by the Almighty God, to have mercy upon my clients—to save them, not from guilt, but from the baseness of their accuser, and the pressure of the treatment under which I am sinking.—With what spirit did you leave your habitations this day?—With what state of mind and heart did you come here from your family?—With what sentiments did you leave your children—to do an act of great public importance—to pledge yourselves at the throne of eternal justice by the awful and solemn obligation of an oath, to do perfect, cool, impartial, and steady justice between the accuser and the accused?—Have you come abroad under the idea, that public fury is clamourous for blood? —That you are put there under the mere formality or memorial of death, and ought to gratify that fury with the blood for which it seems to thirst?—If you are—I have known some of you—more than one, or two, or three in some of those situations, where the human heart speaks its honest sentiments.—I think,

I ought to know you well—you ought to know me—and there are some of you, who ought to listen to what so obscure an individual may say, not altogether without some degree of personal confidence and respect.—I will not solicit your attention by paying the greatest compliments which man can pay to man;—but I say, I hold you in regard as being worthy of it—I will speak such language as I would not stoop to hold, if I did not think you worthy of it.

Gentlemen, I will not be afraid of beginning with what some may think I should avoid, the disastrous picture which you must have met upon your way to this Court—A more artful advocate might endeavour to play with you, in supposing you to possess a degree of pity and of feeling beyond that of any other human being—But I, gentlemen, am not afraid of beginning by warning you against those prejudices, which all must possess—by speaking strongly against them—by striking upon the string—if not strong enough to snap it—to wake it into vibration. Unless you make an exertion beyond the power almost of men to make, you are not fit to try this cause. You may preside at such an execution as the witness would extol himself for—at the sentence flowing from a very short enquiry into reason—But you are not fit to discharge the awful trust of honest men coming into the box indifferent as they stand unsworn, to pronounce a verdict of death and infamy, or of existence and of honour. You have only the interval between this and pronouncing your verdict to reflect, and the other interval when you are resigning up your last breath, between your verdict and your grave, when you may lament that you did not as you ought.

Do you think, I want to flatter your passions?—I would scorn myself for it. I want to address your reason—to call upon your consciences—to remind you of your oaths, and the consequence of that verdict, which upon the law and the fact you must give between the accuser and the accused. Part of what I shall say, must of necessity be addressed to the Court; for it is matter of law:—But upon this subject, every observation in point of law is so inseparably blended with the fact, that I cannot pretend to say, that I can discharge your attention, gentlemen, even when I address the Court—On the contrary, I shall the more desire your attention, not so much that you may understand what I shall say, as what the Court shall say.

Gentlemen, this indictment is founded upon the stat. 25 Ed. 3. The statute itself begins with a melancholy observation upon the pronness to deterioration, which has been found in all countries unfortunately to take place in their criminal law, particularly in the law respecting high treason. The statute begins with reciting, that in the uncertainty of adjudications, it became

came difficult to know what was treason and what was not, and to remove further difficulty it professes to declare all species of treason, that should thereafter be so considered, and by thus regulating the law to secure the state and the constitution and the persons of those interested in the executive departments of the government, from the common acts of violence that might be used to their destruction. The three first clauses of the statute seem to have gone a great way indeed upon the subject; because the object of the provisionswas to protect 'the person'—and I beg of you to understand what I mean by person—I mean the *natural person*: I mean no figure of speech—not the Monarch in the abstract, but the natural man:—the first clause was made without the smallest relation to the Executive Power, but solely to the natural body and person. The words are, "when a man doth *compass* or imagine the death of the King, or of our Lady his Queen, or their eldest son and heir, and thereof be upon sufficient proof attainted of open deed by men of his condition, he shall be a traitor."—This I say relates only to the natural person of the King—The son and heir of the King is mentioned in the same manner, but he has no power, and therefore a compassing his death, must mean the death of his natural person, and so must it be in the case of the King. To conceive the purpose of destroying a common subject was once a felony of death, and that was expressed in the same language, "*compassing* and *imagining* the death of the subject." It was thought right to dismiss that severe rigour of the law in the case of the subject, but it was thought right to continue it in the case of the King, in contradistinction to all the subjects within the realm.

The statute after describing the persons, describes what shall be evidence of that high and abominable guilt:—it must appear by open deed—the intention of the guilty heart must be proved by evidence of the open deed committed towards the accomplishment of the design. Perhaps in the hurry of speaking, perhaps from the mistakes of reporters; sometimes from one and sometimes from the other, Judges are too often made to say, that such or such an overt act is, if proved to have been committed, ground upon which the jury must find the party guilty of the accusation. I must deny the position, not in the reason of the thing, but I am fortified by the ablest writers upon the law of treason. In the reason of the thing, because the design entertained and act done are matters for the Jury. Whether a party compassed the King's death or not is matter for the Jury: and therefore if a certain fact be proved, it is nonsense to say, that such a conclusion *must* follow; because a conclusion of law would then be pronounced by the Jury, not by the Court. I am warranted in this by the writers cited by

Mr.

Mr. Justice Foster; and therefore, gentlemen, upon the first count in the indictment, you are to decide a plain matter of fact—1st. Whether the prisoner did compass and imagine the death of the King?—and 2nd. whether there be any act proved or apparent means taken, which he resorted to for the perpetration of that crime?

Upon this subject, many observations have already been made before me. I will take the liberty of making one:—I do not know, whether it has been made before. Even in a case where the overt act stated has of its own nature gone to the person of the King, still it is left to the Jury to decide, whether it was done with the criminal purpose alledged, or not. In Russel's case, there was an overt act of a conspiracy to seize the guards—the natural consequence threatened from an act of gross violence so immediately approaching the King's person, might fairly be said to affect his life, but still it was left to the Jury to decide, whether that was done for the purpose of compassing the King's death. I mention this, because I think it a strong answer to that kind of expressions, which, in bad times, fall from the mouths of prosecutors; neither law, nor poetry, but sometimes half metaphysical. Laws may be enacted in the spirit of sound policy and supported by superior reason; but when only half considered, and their provisions half enumerated, they become the plague of the government and the grave of principle. It is that kind of refinement and cant which overwhelmed the law of treason, and brought it to a metaphysical death; the laws are made to pass through a contorted understanding, vibratory and confused, and therefore after a small interval from the first enaction of any law in Great Britain, the dreams of fancy get around, and the law is lost in the mass of absurd comment. Hence it was that the statute gave its awful declarations to those glossarisms, so that if any case arise, apparently within the statute, they were not to indulge themselves in conjecture, but refer to the standard and abide by the law as marked out for them. Therefore, I say, that the issue for the jury here is to decide in the words of the statute, whether the prisoners did compass the death of the King; and whether they can say upon their oaths, that there is any overt act proved in evidence manifesting an intention of injury to the natural person of the King?

I know that the semblance of authority may be used to contradict me; if any man can reconcile himself to the miserable toil of poring over the records of guilt, he will find them marked, not in black, but in red, the blood of some unfortunate men, leaving the marks of folly, barbarity, and tyranny. But I am glad that men, who in some situations appear not to have had the pulse of honest compassion, have made sober reflections in the

the hour of political disgrace. Such has been the fate of Lord Coke, who in the triumph and insolence of power, pursued a conduct, which in the hour of calm retreat, he regretted in the language of sorrow and disappointment. He then held a language which I willingly repeat—"That a conspiracy to levy "war, was no act of compassing the murder of the King."—There he spoke the language of law and of good sense; for a man shall not be charged with one crime and convicted of another. It is a narrow and a cruel policy, to make a conspiracy to levy war, an act of compassing the King's death; because it is a separate and distinct offence—because it is calling upon the honest affections of the heart and creating those pathetical effusions, which confound all distinct principles of law, a grievance not to be borne in a state, where the laws ought to be certain.

This reasoning is founded upon the momentary supposition, that the evidence is true; for you are to recollect the quarter from whence it comes; there has been an attempt by precipitate confession, to transfer guilt to innocence in order to escape the punishment of the law. Here, gentlemen, there is evidence of levying war, which act, it is said, tends to the death of the King: That is, a constructive treason, calculated as a trap for the loyalty of a jury; therefore you should set bounds to proceedings of that kind; for it is an abuse of the law, to make one class of offence, sufficiently punished already, evidence of another. Every Court and every Jury should set themselves against crimes, when they come to determine upon distinct and specified guilt;—they are not to encourage a confusion of crimes by disregarding the distinction of punishments, nor shew the effusion of their loyalty by an effusion of blood.

I cannot but say, that when cases of this kind have been under judgment in Westminster-hall, there was some kind of natural reason to excuse this confusion in the reports—the propriety of making the person of the King secure, a war immediately adjoining the precincts of the palace, a riot in London, might endanger the life of the King. But can the same law prevail in every part of the British empire? It may be an overt act of compassing the King's death to levy war in Great Britain: But can it be so in Jamaica, in the Bahama Islands, or in Corsica, when it was annexed to the British empire? — Suppose at that time, a man had been indicted there for compassing the King's death, and the evidence was, that he intended to tranfer the domininion of the island to the Genoese or the French; what would you say, if you were told, that was an act by which he intended to murder the King! — What, by seizing Corsica, was he to murder the King!—How can there be any immediate attempt upon the King's life by such a proceeding

ing?—It is not *possible*, and therefore no such consequence can be *probably* inferred—I call upon you to listen to the Court with respect, but I also call upon you to listen to common sense, and consider, whether the conspiring to raise war can, in this country, be an overt act of compassing the King's death?—I will go further.—If the stat. of Edw. 3. had been conceived to make a conspiracy to levy war an overt act of compassing the King's death, it would be unnecessary to make it penal by any subsequent statute, and yet subsequent statutes were enacted for that purpose, which I consider an unanswerable argument, that it was not considered as coming within the purview of the clause against compassing the King's death.

Now, gentlemen, you will be pleased to consider, what was the evidence brought forward to support this indictment. I do not think necessary to exhaust your attention by stating at large the evidence given by Capt. Armstrong. He gives an account which we will have occasion to examine with regard to its credibility:—he stated his introduction, first, to Mr. Henry Sheares, afterwards to his brother, and he stated a conversation which you do not forget; so strange has it been!—But in the whole course of his evidence, so far from making any observation, or saying a word of connexion with the power at war with the King, he expressly said, that the insurrection, by whomsoever prepared, or by what infatuation encouraged, was to be a *home* exertion, independent of any foreign interference whatever. And therefore I am warranted in saying, that such an insurrection does not come within the first clause of the statute. It cannot come within the second of adhering to the King's enemies, because that means his *foreign* enemies, and here so far from any intercourse with them, they were totally disregarded.

Adhering to the King's enemies means co-operating with them, sending them provisions, or intelligence, or supplying them with arms. But I venture to say, that there has not been any one case, deciding that any act can be an adherence to a foreign enemy, which was not calculated for the advantage of that enemy. In the case of Jackson, Hensey, and Lord Preston, the parties had gone as far as they could in giving assistance. So it was in Quigley's—But in addition to this, I must repeat, that it is utterly unnecessary the law should be otherwise, for levying war is, of itself, a crime; therefore it is unnecessary by a strained construction to say, that levying war, or conspiring to levy war, should come within any other clause equally penal, but not so descriptive.

But, gentlemen, suppose I am mistaken in both points of my argument; suppose the prisoners (if the evidence were true) did compass the King's death and adhere to the King's ene-

enemies, what are you to found your verdict upon?—Upon your oaths:—what are they to be founded upon?—Upon the oath of the witness—and what is that founded upon?—Upon this, and this only—that he does believe there is an eternal God, an intelligent supreme existence, capable of inflicting eternal punishment for offences, or conferring eternal compensation upon man, after he has passed the boundary of the grave. But where the witness believes he is possesed of a perishing soul, and that there is nothing upon which punishment or reward can be exerted, he proceeds regardless of the number of his offences, and undisturbed by the terrors of exhausted fancy which might save you from the fear, that your verdict is founded upon perjury.—I suppose that he imagines, that the body is actuated by some kind of animal machinery. I know not in what langauge to describe his notions—suppose his opinion of the beautiful system framed by the Almighty hand to be, that it is all folly and blindness compared to the manner in which he considers himself to have been created, or his abominable heart conceives its ideas, or his tongue communicates his notions.—Suppose him, I say, to think so, what is perjury to him?—He needs no Creed, if he thinks his miserable body can take eternal refuge in the grave, and the last puff of his nostrils can send his soul into annihilation. He laughs at the idea of eternal justice, and tells you, that the grave into which which he sinks, as a log, forms an entrenchment against the throne of God, and the vengeaance of exasperated justice!

Do you not feel, my fellow countrymen, a sort of anticipated consolation, in reflecting, that the religion which gave us comfort in our early days, enabled us to sustain the stroke of affliction, and endeared us to one another, and when we see our friends sinking into the earth, fills us with the expectation, that we rise again, that we but sleep for a while to wake for ever—But what kind of communion can you hold, what interchange expect, what confidence place in that abject slave—that condemned, despaired of wretch, who acts under the idea, that he is only the folly of a moment—that he cannot step beyond the threshold of the grave—that that which is an object of terror to the best and of hope to the confiding, is to him contempt, or despair?

Bear with me, my countrymen, I feel my heart run away with me—the worst men only can be cool.—What is the law of this country?—If the witness does not believe in God, or a future state, you cannot swear him.—What swear him upon? Is it upon the book, or the leaf?—You might as well swear him by a bramble or a coin. The ceremony of kissing is only the external symbol, by which man seals himself to the precept, and says,—"May God so help me, as I swear the truth."

He

He is then attached to the Divinity upon the condition of telling truth, and he expects mercy from Heaven, as he performs his undertaking.—But the infidel!—By what can you catch his soul—or by what can you hold it?—You repulse him from giving evidence—for he has no conscience—no hope to chear him, no punishment to dread!—What is the evidence touching that unfortunate man? What said his own relation, Mr. Shervington? He had talked to him freely, had known him long—What kind of character did he give of him?—Paine was his creed, and his philosophy—He had drawn his maxims of politics from the vulgar and furious anarchy broached by Mr. Paine.—His ideas of religion were adopted from the vulgar maxims of the same man, the scandal of inquiry, the blasphemer of his God and of his King. He bears testimony against himself that he submitted to the undertaking of reading both his abominable tracts,—that abominable abomination of all abominations, "*Paine's Age of Reason*," professing to teach mankind, by acknowledging, that he did not learn himself!—working upon debauched and upon narrow understandings—why not swear the witness upon the vulgar maxims of that base fellow, that wretched outlaw and fugitive from his country and his God?

Is it not lamentable to see a man labouring under an incurable disease and fond of his own blotches? "Do you wish, says he, to know my sentiments with regard to politics; I have learned them from Paine!—I do not love a King—and if no other executioner could be found, I would myself plunge a dagger into the heart of George III. because he is a King!—and because he is my King, I swear by the sacred missal of Paine, I would think it a meritorious thing to plunge a dagger into his heart, to whom I had "devoted a soul, which Mr. Paine says, I have not to lend." Is this the casual effusion of a giddy young man, not considering the meaning of what he said?—If it were said among a parcel of boarding-school misses, where he might think he was giving specimens of his courage by nobly denying religion, there might be some excuse—There is a latitude assumed upon some such occasions.—A little blasphemy, and a little obscenity, passes for wit in some companies.—But recollect, it was not to a little miss, whom he wished to astonish, that he mentioned these sentiments, but a kinsman, a man of boiling loyalty.—I confess I did not approve of his conduct in the abstract—talking of runing a man through the body—but I admired the honest boldness of the soldier, who expressed his indignation in such warm language.—If Mr. Shervington swore true, Captain Armstrong must be a foresworn witness—it comes to that simple point—you cannot put it upon other ground.—I put it to your

your good sense—I am not playing with your understandings—I am putting foot to foot and credit to credit.—One or other of the two must be perjured—Which of them is it? If you disbelieve Captain Armstrong, can you find a verdict of blood upon his evidence?

Gentlemen, I go further—I know your horror of crimes, your warmth of loyalty. They are among the reasons why I respect and regard you.—I ask you then, will you reject such a witness?—or would you dismiss the friend you regarded, or the child you loved, upon the evidence of such a witness? Suppose him to tell his own story,—"I went to your friend, or your child—I addressed myself in the garb of friendship—in the smile of confidence—I courted confidence in order to betray it—I traduced you — spoke all the evil I could against you to inflame him—I told him your father does not love you."—If he went to you and told you this—that he inflamed your child and abused you to your friend, and said, "I come now to encrease it by the horror of superadded cruelty"—would you dismiss from your love and affection the child or the friend you loved for years?—You would not prejudge them.—You would examine the consistency of the man's story; you would listen to it with doubt and receive it with hesitation.

Says Capt. Armstrong, "Byrne was my bookseller—from him I bought my little study of blasphemy and obscenity with which I amused myself."—"Shall I introduce Mr. Sheares to you?"—not saying which—What is done then—He thought it was not right till he saw Capt. Clibborn. Has he stated any reason, why he supposed Mr. Sheares had any wish at all to be introduced to him?—any reason for supposing, that Byrne's principles were of that kind, or any reason, why he imagined the intercourse was to lead to any thing improper?—It is most material, that he says, he never spoke to Byrne upon political subjects, therefore he knew nothing of Byrne's principles, nor Byrne of his—But the proposal was made and he was so alarmed, that he would not give an answer till he saw his Captain.—Is not this incredible?—There is one circumstance which made an impression upon my mind, that he assumed the part of a public informer, and in the first instance, came to the field with pledgets and bandages—he was scarcely off the table, when a witness came to his credit.—It is the first time, that I saw a witness taking fright at his own credit, and sending up a person to justify his character.

Consider how he has fortified it: He told it all to Capt. Clibborn!—He saw him every evening, when he returned, like a bee, with his thighs loaded with evidence. What is the defence!—That the witness is unworthy of belief—My clients say, their lives are not to be touched by such a man; he is

found to be an informer—He marks the victim—You know the world too well, not to know that every falsehood is reduced to a certain degree of malleability by an alloy of truth—Such stories as these are not pure and simple falsehoods—look at your Oates, your Bedloes, and Dugdales!—I am disposed to believe, shocking as it is, that this witness had the heart, when he was surrounded by the little progeny of my client,—when he was sitting in the mansion in which he was hospitably entertained—when he saw the old mother supported by the piety of her son, and the children basking in the parental fondness of the father—that he saw the scene and smiled at it—contemplated the havoc he was to make, consigning them to the storms of a miserable world without having an anchorage in the kindness of a father!—Can such horror exist, and not waken the rooted vengeance of an eternal God? *—But it cannot reach this man beyond the grave—Therefore, I uphold him here. I can imagine it, gentlemen, because, when the mind becomes destitute of the principles of Morality and Religion, all within the miserable being is left a black and desolated vast never cheered by the rays of tenderness and humanity—When the belief of eternal justice is gone from the soul of man, horror and execution may set up their abode. I can believe, that the witness—with what view, I cannot say—with what hope, I cannot conjecture—you may—did meditate the consigning of these two men to death, their children to beggary and reproach—abusing the hospitality with which he was received, that he might afterwards come here and crown his work, having obtained the little spark of truth by which his mass of falsehood was to be put into animation.

I have talked of the inconsistency of the story—Do you believe it, gentlemen?—The case of my client is, that the witness is perjured, and you are appealed to in the name of that ever-living God whom you revere, but whom he despiseth, to consider, that there is something to save him from the baseness of such an accuser.

But I go back to the testimony—I may wander from it, but it is my duty to stay with it. Says he, "Byrne makes an important application—I was not accustomed to it—I never spoke to him, and yet he, with whom I had no connexion introduces me to Sheares—This is a *true* brother." You see, gentlemen, I state this truly—he never talked to Byrne about politics; how could

* In another edition of this Trial, we find the following Note:—"Here the sympathizing humanity of the Orator could not be suppressed—tears stopped the eloquence of his tongue!—Had the writer of this Report the abilities of a Cicero, or the language of a Demosthenes, he could not describe the feelings of the learned Counsel's heart—He can only say, in the words of Virgil, *Sit mihi fas audita loqui*, "what I have heard, permit me to relate."

could Byrne know his principles?—By inspiration?—He was to know the edition of the man, as he knew the edition of his books—"You may repose all confidence."—I ask not is this true; but I say it can be nothing else than false. I do not ask you to say it is doubtful—it is a case of blood—of life or death, and you are to add to the terrors of a painful death, the desolation of a family, overwhelming the aged with sorrow, and the young with infamy.—Gentlemen, I should disdain to reason with you; I am pinning your minds down to one point, to shew you to demonstration, that nothing can save your minds from the evidence of such perjury—not because you may think it false—but because it is impossible it can be true. I put into the scales of Justice that execrable perjury, and I put into the other, the life, the fame, the fortune, the children of my client. Let not the balance tremble as you hold it—and as you hold it now, so may the balance of eternal justice be held for you.

But is it upon his inconsistency only I call upon you to reject him?—I call in aid the evidence of his own kinsman, Mr. Shervington and Mr. Drought, the evidence of Mr. Bride and Mr. Graydon. Before you can believe Armstrong, you must believe that all those are perjured—What are his temptations to perjury?—The hope of bribery and reward—and he did go up with his sheets of paper in his hand—here is one, it speaks treason—here is another, the accused grows paler—here is a third, it opens another vein.—Had Shervington any temptation of that kind?—No, let not the honest and genuine soldier lose the credit of it.—He has paid a great compliment to the proud integrity of the King, his master, when he did venture at a time like this to give evidence—"I would not have come for 100 guineas."—I could not refuse the effusion of my heart, and exclaiming, May the blessings of God pour upon you, and may you never want 100 guineas!

There is another circumstance—I think I saw it strike your attention, my Lords—it was the horrid tale of the three servants whom he met upon the road—they had no connexion with the rebels—if they had they were open to a summary proceeding—He hangs up one, shoots a second, and administers torture to the body of the third, in order to make him give evidence!—Why, my Lords, did you feel nothing stir within you—our abjudications had condemned the application of torture for the extraction of evidence—When a wild and furious assassin had made a deadly attempt upon a life of much public consequence, it was proposed to put him to the torture in order to discover his accomplices. I scarcely know whether to admire most the awful and impressive lesson given by Felton, or the doctrine stated by the Judges of the land. "No", said he, "put me not to the torture; for in the extravagance of my pain I may be brought

brought to accuse yourselves."—What say the Judges? "It is not allowable by the Law and Constitution of England to inflict torture upon any man, or to extract evidence under the coercion of personal sufferings." Apply that to this case—if the unfortunate man did himself dread the application of such an engine for the extraction of evidence, let it be an excuse for his degradation, that he sought to avoid the pain of body by public infamy.

But there is another observation more applicable. Says Mr. Drought—"Had you no feeling, or do you think you will escape future vengeance?"—"Oh, Sir, I thought you knew my ideas too well to talk in that way."—Merciful God! Do you think it is upon the evidence of such a man, that you ought to consign a fellow subject to death?—He who would hang up a miserable peasant to gratify caprice, could laugh at remonstrance and say, "You know my ideas of futurity." If he thought so little of murdering a fellow creature without trial and without ceremony, what kind of compunction can he feel within himself, when you are made the instruments of his savage barbarity?—He kills a miserable wretch, looking perhaps for bread for his children, and who falls unaccused, uncondemned. What compunction can he feel at sacrificing other victims, when he considers death as eternal sleep and the darkness of annihilation?—These victims are at this moment led out to public execution, he has marked them for the grave, he will not bewail the object of his own work; they are passing through the vale of death, while he is dosing over the expectancy of mortal annihilation.

Gentlemen, I am too weak to follow the line of observation I had made—but, I trust, I am warranted in saying, that if you weigh the evidence, the balance will be in favour of the Prisoners.

But there is another topic or two to which I must solicit your attention. If I had been stronger in a common case, I would not have said so much:—Weak as I am here, I must say more. It may be said that the parole evidence may be put out of the case; attribute the conduct of Armstrong to folly, or passion, or whatever else you please, you may safely repose upon the written evidence. This calls for an observation or two. As to Mr. Henry Sheares, that written evidence, even if the hand-writing were fully proved, does not apply to him. — I do not say, it was not admissible. — The writings of Sidney, found in his closet, were read — justly according to so some —but I do not wish to consider that now. But I say, the evidence of Mr. Dwyer has not satisfactorily established the hand-writing of John. I do not say, it is not proved to a certain extent: but it is proved in the very slightest manner that you ever saw paper proved—it is barely evidence to go to you, and the wit-

Witness might be mistaken. An unpublished writing cannot be an overt act of treason; so it is laid down expressly by Hale and Foster. A number of cases have occurred and decisions have been pronounced, asserting, that writings are not overt acts for want of publication; but if they plainly relate to an overt act proved, they may be left to the jury for their consideration. But here it has no reference to the overt laid; it could not be intended for publication until after the unfortunate event of revolution had taken place, and therefore it could not be designed to create insurrection. Gentlemen, I am not Counsel for Mr. John Sheares, but I would be guilty of cruelty, if I did not make another observation. This might be an idle composition, or the translation of idle absurdity from the papers of another country. The manner in which it was found leads me to think that the more probable. A writing designed for such an event as charged, would hardly be left in a writing box, unlocked, in a room, near the hall door. The manner of its finding also shews two things:—that Henry Sheares knew nothing of it, for he had an opportunity of destroying it, as Alderman Alexander said he had; and further, that he could not have imagined his brother had such a design, and it is impossible if the paper had been designed for such purposes, that it would not be communicated to him.

There is a point to which I will beseech the attention of your Lordships—I know your humanity, and it will not be applied merely because I am exhausted or fatigued. You have only one witness to any overt act of treason. There is no decision upon the point in this country—Jackson's case was the first; Lord Clonmell made allusion to the point; but a Jury ought not to find guilty upon the testimony of a single witness. It is the opinion of Foster, that by the common law, one witness, if believed, was sufficient. Lord Coke's opinion is, that two were necessary: they are great names; no man looks upon the works of Foster with more veneration than myself, and I I would not compare him with the depreciated credit of Coke; I would rather leave Lord Coke to the character which Foster gives him; that he was one of the ablest lawyers, independent of some particulars, that ever existed in England.

In the wild extravagance, heat, and cruel reign of the Tudors, such doctrines of treason had gone abroad, as drenched the kingdom with blood. By the construction of Crown Lawyers, and the shameful complaisance of Juries, many sacrifices had been made, and therefore it was necessary to prune away these excesses by the stat. of Edw. 6. and therefore there is every reason to imagine from the history of the times, that Lord Coke was right in saying, not by new statute, but by the common law, confirmed and redeemed by declaratory acts, the trials

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were regulated. A law of Philip and Mary was afterwards enacted, some think it was a repeal of the stat. of Edw. 6. some think not. I mention this diversity of opinions with this view, that in this country, upon a new point of that kind, the weight of criminal prosecution will turn the scale in favour of the prisoners, and that the Court will be of opinion, that the stat. 7. W. 3. did not enact any new thing, unknown to the common law, but redeemed it from abuse. What was the state of England?—The King had been declared to have abdicated the throne, prosecutions, temporising juries, and the arbitrary construction of Judges condemned to the scaffold those who were to protect the Crown—men, who knew that after the destruction of the cottage, the palace was endangered. It was not then the enaction of any thing new; it was founded in the caution of the times, and derived from the maxims of the Constitution —I know the peevishness with which Burnet observed upon that statute; he is reprehended in a modest manner by Foster; but what says Blackstone, of great authority, of the clearest head, and the profoundest reading?—He differs from Montesquieu, the French philosopher.

"In cases of treason, there is the accused's oath of allegiance to counterpoise the information of a single witness; and that may perhaps be one reason why the law requires a *double* testimony to convict him; though the principal reason undoubtedly is to secure the subject from being sacrificed to fictitious conspiracies, which have been the engines of profligate and crafty politicians in all ages." *

Gentlemen, I do not pretend to say, that you are bound by an English act of parliament. You *may* condemn upon the testimony of a single witness.—You, to be sure, are too proud to listen to the wisdom of an English law—Illustrious Independants!—You may murder under the semblance of judicial forms, because you are proud of your blessed independence!—You may pronounce that to be legally done, which would be murder in England, because you are proud!—You may imbrue your hands in blood, because you are too proud to be bound by a foreign act of parliament, and when you are to look for what is to save you from the abuse of arbitrary power, you will not avail yourself of it, because it is a foreign act of parliament!—Is that the independence of an *Irish* Jury?—Do I see the heart of any Englishman move when I say to him—"Thou servile Briton, you cannot condemn upon the perjury of a single witness, because you are held in the tight waistcoat of the congency of an act of parliament." If power seeks to make victims by judicial means, an act of parliament would save you from the perjury of abominable malice.—Talk not of proud slavery to law, but lament that you are bound by the integrity and ir-

* 4 Black. Com. 358.

irresistable strength of right reason, and at the next step bewail, that the all poweaful Author of Nature has bound himself in the illustrious servitude of his attributes, which prevent him from thinking what is not true, or doing what is not just. Go then, and enjoy your independence.—At the other side of the water, your verdict upon the testimony of a single witness would be murder.—But here you can murder without reproach, because there is no act of parliament to bind you to the ties of social life, and save the accused from the breath of a perjured informer. In England, a jury could not pronounce conviction upon the testimony of the purest man, if he stood alone, and yet what comparison can that case bear with a blighted and marred informer? where every word is proved to be perjury, and every word turns back upon his soul!

I am reasoning for your country and your children, to the last hour of your dissolution. Let me not reason in vain. I am not playing the advocate — you know I am not. Your conscience tells you I am not. I put this case to the Bench;—the stat. 7 H. 3. does not bind this country by its legislative cogency—and will you declare positively and without doubt, that it is common law, or enacting a new one?—Will you say it has no weight to influence the conduct of a Jury from the authority of a great and exalted nation?—The only nation in Europe where liberty has seated herself.—Do not imagine, that the man who praises liberty is singing an idle song:—for a moment, it may be the song of a bird in his cage:—I know it may. But you are now standing upon an awful isthmus—a little neck of land, where liberty has found a seat.—Look about you—look at the state of the country—the tribunals that dire necessity has introduced:—Look at this dawn of law, admitting the functions of a Jury.—I feel a comfort—methinks I see the venerable forms of Holt and Hale, looking down upon us, attesting its continuance.—Is it your opinion, that bloody verdicts are necessary—that blood enough has not been shed?—That the bonds of society are not to be drawn close again, nor the scattered fragments of our strength bound together, to make them of force; but they are to be left in that scattered state, in which every little child may break them to pieces?—You will do much towards tranquilizing the country by a verdict of mercy.—Guard yourselves against the sanguinary excesses of prejudice or revenge, and though you think there is a great call of public justice, let no unmerited victim fall.

Gentlemen, I have tired you—I durst not relax.—The danger of my client is from the hectic of the moment which you have fortitude, I trust, to withstand; in that belief, I leave him to you—and as you deal justice and mercy, so may you find it—and I hope that the happy compensation of an honest discharge

charge of your duty may not be deferred till a future existence which this witness does not expect, but that you may speedily enjoy the benefits you will have conferred upon your country.

Mr. *Prime Sergeant* replied to Mr. Curran, and in a speech of some length, commented upon the law that had been adduced, and contended that it had been settled even in England, that Lord Coke was mistaken, and that one witness was sufficient in high treason by the common law; that in Ireland, the point, as he supposed, had been put to rest on the trial of Jackson *(vide ante)*—He then concluded, by stating the several overt acts set forth in the indictment, and applying the evidence to them.

Mr. *Henry Sheares.*——My Lord, I wish to say a word.

Lord *Carleton.*——It is not regular after the Counsel for the Crown have closed. I asked you at the proper time, you then declined. However, go on.

Mr. *Henry Sheares.*——My Lord, after the able and eloquent defence which has been made for me by my Counsel, it would ill become me to add any thing to it. But there is one part of it, which appears to me, not to have been sufficiently dwelt upon. It is respecting that paper. I protest most solemnly, my Lord, I knew nothing of it; to know of it and leave it where it was when the magistrate came, is a folly so glaring, that I cannot be supposed to have been guilty of it. When the Alderman rapped at the door, I asked, what was the matter—after he was admitted, he said he wanted my papers; I told him they were there. My Lords, is it possible, I could commit myself and all I hold dear, by so egregious an act of folly?—Having the dearest sources of happiness around me, should I sacrifice them and myself, by leaving such a document in an open writing box?

My Lords, I beg your Lordship's pardon. I thank you for this indulgence:—It would be irregular for me to expatiate further.—The evidence of Captain Armstrong is one of the most ingenious, and malicious fabricated stories, with respect to me, I ever heard of.—My Lords, I should think, I could not be legally implicated by any paper, found in that way.

Lord *Carleton.*——Gentlemen of the Jury, the indictment in this case imputes to the prisoners at the bar crimes of the greatest magnitude, in which the prisoners have the most important concern, in which justice is equally interested;—on the one hand, these crimes go to the very existence of the State; on the other, the consequences of conviction are of the most penal nature. You will therefore determine impartially between the public, which calls for the prosecution of real offenders,

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and the prisoners, who are entitled to an acquittal, if they are innocent; and I am sure you will decide this case, without being influenced, either by the present critical situation of the country, or the pathetic address to your passions which you have heard from the prisoner's counsel.

Gentlemen, I will state to you, as well as I can, from the weak state in which I am, after so long a sitting, the law respecting high treason, so far as may be necessary for the decision of this case; the overt acts contained in the indictment upon which the prisoners have been given in charge to you, and the evidence which has been given in support of them; and I shall then trouble you with a few observations.

The indictment charges two species of treason, compassing the death of the King—and adhering to his enemies; in indictments of this kind, it is necessary to set forth some overt acts; they are the steps, means, or measures taken in prosecution of, and to effectuate the intent and design proposed; if any of them be properly laid and proved, it will warrant a conviction, although the evidence be not sufficient to support the others.

As to the first species of treason, I shall state what I take to be the law, as clearly laid down by authors of great legal ability, clear understanding, approved integrity, and constitutional attachment; in laying down the law as I shall state it from these venerable authors, I shall do it very differently from the way in which it has been represented by the learned counsel for the prisoners. They lay it down, as is very often done in prosecutions of this nature, more from their own imgination than with a view to those venerable authors, to whom the bench are obliged to look for information. As to the first species of treason, the compassing and imagining the death of the King; the life of the King as the Chief Magistrate, is so linked and interwoven with the existence of the state, that if it be taken away, convulsions must arise destroying every bond of society, levelling all order, annihilating all liberty and property, rooting out our noble Constitution, and overspreading the land with desolation;—the law therefore with anxious solicitude for his protection, renders the intention to destroy the King, as criminal as its accomplishment would be, provided such intention is acted upon and any measures are adopted for carrying it into execution; every stroke levelled at the King's person aims destruction at the public tranquillity, and the guilty purposes of the mind are placed in the same degree of guilt as if they were compleatly carried into execution, as soon as any measures have been taken to render them effectual: the care which the law has taken of the personal safety of the King is not confined to acts directly aiming at his life, it is extended to every thing wilfully and deliberately done or attempted, whereby in the natural course of things

things, or in the common experience of mankind, his life may be endangered; and the measures taken in such cases may at the same time be evidence and overt acts of compassing his death.

Among the many cases cited by authors of the highest reputation, the following have been considered as law: Forming conspiracies to usurp by force and in defiance of the authority of parliament, the government of the kingdom, to destroy its constitution, and in so doing, to destroy the monarchy; or to levy war against the King's person, thereby to depose him or otherwise to depose his Majesty, are overt acts of compassing the King's death within the stat. of 25 of Edw. 3. So is holding consultations or entering into agreement, or advising, soliciting, or persuading others for any such purposes, or assenting to such purposes. The law is the same as the entering into any other measures to effectuate any of the said purposes. The moment the power of the government is usurped, the King is in effect deposed; he is bound by the duty of his situation to resist such attempts, even at the peril of his life, and the several acts which I have mentioned whereby his life may be endangered, have been deemed under the sound construction of the statute, and upon principles of substantial political justice, overt acts of compassing his death. It is not material when the overt act is a conspiracy, to depose the King, or the levying or conspiring to levy direct war against his person, involving an intention to depose him, whether the person charged with compassing the King's death has in his contemplation all the mischief which may flow from the acts which he meditates: if the death of the King is, in the nature of things, and the common experience of mankind, likely to result from the measures taken and the acts done, it is sufficient; and the act done is considered as done in pursuance of an intent to compass the death of the King.

This, gentlemen, is the unanimous opinion of the Court, and the law, in this respect, does not rest upon our authority only. It was the unanimous opinion of the judges who sat on the trials of Tooke and Hardy: Adhering to the King's enemies is likewise an overt act of compassing the King's death, it manifests a design to depose him. He is bound to support the Law and the Constitution, and to defend the kingdom against his enemies, and in the contest his life may be put in hazard.

Gentlemen, an attempt has been made, for the first time (depending merely upon the ingenuity of the counsel) to contend, that the King not having personal residence here, a conspiring to depose him, or a levying of war against his person, cannot be overt acts of compassing his death: if we were to adopt that

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opinion, we must expunge from the 25 of Edw. III. one of the most important provisions. We must go against the concurring opinions of all our predecessors who have considered the law of both countries in this respect, as exactly the same; and that as applicable to Ireland, to levy war against the King's person, or conspiring to levy such war, or otherwise to depose the King, are overt acts of compassing his death, whether he be within this country or not; and therefore it is the unanimous opinion of the bench, that there is no distinction between the law of England and Ireland on this point. Gentlemen, another observation has been made, and pressed upon us;—when I take notice of these observations, in which I do not agree, I do not mean to find fault with the counsel; it is my respect for them which induces me to answer their arguments. It is said, that in treason, two witnesses are necessary here; that they were necessary by the common law of England, and that the common law being the same in both countries, two witnesses are necessary here; that the common law is the same in both countries, I adopt; but as to this point of two witnesses being necessary in treason in this kingdom, with the concurrence of the bench, and the opinion of several Judges of this country given in some of the latest cases here, I avow, that two witnesses are not necesary; they are necessary in England by a statute, which does not prevail in the same extent here. It is very true, that Lord Coke was of a different opinion, as to the common law of England; however Lord Hale and Mr. Justice Foster did not agree with Lord Coke, and Mr. Justice Foster says, it was the received opinion that Lord Coke was wrong.

Another observation has been made, that that which constitutes one species of treason cannot be laid as an overt act of others. However, the contrary opinion is the settled law of England, and Lord Coke was wrong in his opinion in that respect as well as the other. Gentlemen, I have stated thus much as applicable to the first count in the indictment. The second count is for adhering to the King's enemies within the realm; that is also treason within the stat. of Edw. III. Aid or comfort afforded to the King's enemies within the realm, or elsewhere, whereby they may be strengthened, or better enabled to carry on war, armaments, or enterprizes against us, or to defend themselves, or whereby the King's hands might be weakened, are acts of adherence to his enemies; any act whereby the relative war-power of the enemy might be promoted, if done with that intent, is a treasonable adherence, though the attempt should prove abortive, and not produce the intended effect; because the party has done all in his power to render it effectual; and, gentlemen, wisely the law is so; for traitors would escape, if no punishment could be inflicted while the go-

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vernment existed; and it would be too late to attempt it when the government was overturned.

No adherence to the rebels, now in arms against the King and his government, will constitute treasonable adherence within the statute: under this indcitment, upon this charge the overt acts must be done, with the intent and design of assisting the French, and must be so considered by you.

Notoriety is sufficient evidence of war, and of the French being enemies to the King, and his government.—Gentlemen, I shall now state the overt acts, which are set forth in the indictment, that you may see, how far you think all or any of them are established. I shall also state the evidence, and I shall afterwards state the object which you are to look at in a narrow point of view for your consideration, that your attention may not be distracted.

[Here his Lordship enumerated the several overt acts in the indictment, classing them as they related to the same subjects, and then proceeded.]

Gentlemen, the two prisoners stand indicted, as concerned in these several acts; and there has been evidence, if you give credit to it, that implicates them both in a conspiracy; and that having been done, every act committed by one is evidence against the other, to the extent of ascertaining the nature of the conspiracy; but it is always in such cases open to the jury to separate the prisoners, and to say how far guilt shall ultimately be confined to one, or extended to both, by the particular evidence in the cause; therefore, gentlemen, in attending to the evidence in this case, you will consider it with its different relative bearings to the two prisoners at the bar. Gentlemen, the first witness produced was John Warnford Armstrong, he deposed—[Here his Lordship minutely recapitulated the evidence of this witness, and observed]—In stating this evidence in order to make the observations thereon, which I have submitted to your consideration, I have taken it for granted, that it is true; leaving it however to you finally to decide upon the credit of the witness, attempted to be impeached, as he has been, and after the observations which you have heard from the prisoners' counsel.

[His Lordship then proceeded to recapitulate the rest of the evidence, observing upon it as he stated it, and particularly pointing to the consideration of the Jury such parts of it as tended to corroborate the evidence of Armstrong; and when he came to that part relative to the paper found by Alderman Alexander, he mentioned that it was found in a writing box which lay upon a table, open and unlocked, and that it did not appear in evidence whose property that writing box was, or to which of the prisoners the house belonged.]

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Mr. *John Sheares*.—I beg your Lordship's pardon, it was in my writing box that paper was found.

Lord *Carleton*.——I could not call upon the Prisoner for any admission of that kind, and I wish the case may be determined on the evidence alone. This paper was in the hand-writing of John: no evidence was offered to disprove his hand-writing to it. It does not appear by express evidence, which of the prisoners was to be deemed as having it in his possession; as against John, who had written, it is of more weight than against Henry; but as against the latter, it is of weight as being the act of one of the conspirators, ascertaining the nature and objects of the conspiracy, nevertheless as to him leaving the discussion, as to the extent of his guilt, open. Gentlemen, this paper wants one circumstance of additional strength in not being published; but notwithstanding it is very powerfully operative in the cause, as corroborative of the other evidence, and as marking the intention of the party, whom it is to affect. A spirit of massacre and rebellion, and intent to destroy the existing government, and to usurp the sovereign power of the state, a hatred to the connection of Ireland with Great Britain, settled plans of attacks to be made on the King's government, and a system of terror and rewards are strongly expressed; in short, the paper speaks so plainly and strongly, that it is only necessary for you to hear it read without my remarking upon the different parts.

[After his Lordship had gone through the whole of the evidence, he said.]

Now, gentlemen, a great deal has been urged, and you must draw your attention to this subject;—much depends upon the credit which you give to the testimony of Captain Armstrong: his testimony is sought to be impeached, by shewing, that he does not believe in a Supreme Being, and in a future state of rewards and punishments. He has sworn that he does believe in a Supreme Being and in a future state of rewards and punishments; though it has been sworn he declared the contrary. If he does not believe in a Supreme Being, and a future state of rewards and punishments, his evidence, to be sure, ought to go for nothing. Whether he has made those declarations, which have been imputed to him, and if he did, whether he made them seriously, and communicating his real opinions, or as matter of idle conversation (for he has been described as giddy and inconsiderate in his expressions) you are to determine. You will also consider the circumstances of corroboration, which have appeared; he gave an account of each meeting, as it was held; in that respect, the evidence of Clibborn supports and fortifies his testimony, and in several parts of his

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testimony, the papers establish his credit in a very strong manner, as I more particularly pointed out to you when I stated those papers to you. The evidence of Kearney also has the same tendency, especially when the memorandum is taken into consideration; on the other hand, as a further ground offered to impeach him, there is a circumstance to be considered, namely, the manner of his getting admission to the prisoners; it has not been pressed upon you, that he was to be considered as an accomplice; but that he went as a spy, for the purpose of discovering the conduct of the Prisoners. You will take that into your consideration, and see what influence it may have upon your minds as to his credit.

Gentlemen, I stated all the different overt acts, intimating, that I might afterwards suggest my ideas as to the object of your inquiry upon a shorter scale. With regard to compassing the death of the King, if meetings were held, or conspiracies formed to overthrow the government, to usurp the sovereign power of the state, to depose the King, in my apprehension, the evidence, if you believe it, and are satisfied such was the object, is sufficient to establish the charge against the Prisoners. Supposing the evidence satisfactory to your minds to establish the fact of a scheme formed to levy war against the King, this agitated war doubtless would (if levied) have been in construction of law, express, direct war against the King's person, and an overt act of compassing and imagining his death. It was to be a war, referring to foreign aid, and invasion, and in which, if the French armies came in time, they might be participators, but which, for special reasons was to precede the arrival of the French; the camp of the King's troops was intended to be taken by storm, or surprize, risings were to take place in various parts of the kingdom, and at periods which were to have a certain relation to each other, the King's artillery, his representative and council, and government, to be seized, and taken into the hands of the insurgents; all those circumstances will be combined together by you, and if you believe that the Prisoners embarked in those designs, as stated by the evidence, the object, in truth, will then appear to be to overset the government, to create a governing power in themselves, and the consequence would be the deposition of the King, a clear overt act of treason, in compassing his death. If therefore, I say, you believe the evidence, as establishing the conclusions which I have mentioned, it is sufficient to maintain the first charge.

If you are satisfied upon the first count, that the facts which I have just now alluded to, have been established against both the prisoners, you will find them both guilty; if they are established against one only, you will find him guilty, and acquit

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the other upon that count, and if gentlemen you entertain any rational doubt, not merely a capricious doubt, but the doubt of sensible men, then, in a capital case, you will lean in favour of life.

With regard to the secand count for adhering to the King's enemies, I have stated to you, that it is of the essence of that charge, that the act done must be with the imputed intent of aiding the King's foreign enemies. The evidence is a conspiracy to raise war, and open rebellion, to take the camp, city of Dublin, the Castle, the Lord Lieutenant and Privy Council: These measures were to be carried into execution at a late period, but a scheme appears to have been framed to bring them forward, from the anxiety of the people involved in the conspiracy, for their friends who were to be tried in Kildare, at the then approaching assizes; therefore an intention was professed of having the rising at an earlier period than was first expected, and this was communicated to Captain Armstrong by the prisoner John Sheares, under the pressure of events, as he stated, which prevented them from waiting any longer, the arrival of the French; you are therefore to consider, whether you can infer, that this rising was acted upon with a view to aid the French. That intent is absolutely necessary. It is matter of notoriety, that the French have been upon the coast the winter before the last, and might possibly be expected again—You must on this count be satisfied of this intent.

The other Judges concurred in opinion with his Lordship.

The Jury then retired for 17 minutes, and brought in a verdict, finding both the Prisoners, GUILTY.

As soon as the verdict was pronounced, the prisoners clasped each other in their arms.

It being now near 8 o'clock on Friday morning, the Court adjourned to 3 o'clock.

When the Court met at he hour appointed,

The *Attorney General* moved, that Henry Sheares and John Sheares might be brought up for the judgment of the Court.

COURT.—Let them be brought up.

Mr. *M'Nally*—My Lords, None of the Counsel assigned for the Prisoners attend, but myself. I have however a point to mention, which I would rather state in the absence of the prisoners (however singular) least if I am not founded, it should fill them with false hopes. I have compared this indictment with that in Stone's case; there it was stated that a war existed, as it does here; but there was an averment which is not to

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be found in this indictment.—"That a war had been carried on and prosecuted, to wit, at Harford in the county of Middlesex" laying a *venue*:—that is not done here. There is a plain reason for it: The words of the statute are, if a man shall adhere to the King's enemies "without the realm or elsewhere." Therefore the indictment should state where the adherence was. I shall not trouble your Lordships further—if I am wrong, I have to apologise, and have only to attribute my interference to the zeal which I feel for my client.

Lord *Carleton*—You have been extremely proper in mentioning it in the absence of the prisoners, because they cannot avail themselves of the objection; for if that whole count were bad, yet the other count would be sufficient to maintain the judgment.

The Prisoners were then brought to the Bar.

The *Clerk of the Crown* read the indictment, and asked them what they had to say, why judgment of death and execution should not be awarded against them according to law.

Mr. *Henry Sheares*.—My Lord, as I had no notion of dying such a death as I am about to meet, I have only to ask your Lordship for sufficient time to prepare myself and family for it.—I have a wife and six children, and hope your humanity will allow me some reasonable time to settle my affairs and make a provision for them.—(Here he was so overwhelmed with tears, that he could not proceed.)

Mr. *John Sheares*.—My Lord, I wish to offer a few words, before the sentence is pronounced, because there is a weight pressing upon my heart much greater than that of the sentence which is to come from the Court. There has been, my Lord, a weight pressing upon my mind from the first moment I heard the indictment read upon which I was tried, but that weight has been more peculiarly and heavily pressing upon my heart, when I found the accusation in the indictment enforced and supported upon the trial; and that weight would be left insupportable, if it were not for this opportunity of discharging it:—it would be insupportable, since a verdict of my country has stamped that evidence as well founded. Do not think, my Lords, that I am about to make a declamation against the verdict of the Jury, or the persons concerned in the trial; I am only about to call to your recollection a part of the charge, which my soul shudders at; and if I had not this opportunity of renouncing it before your Lordships and this auditory, no courage would be sufficient to support me. The accusation, my Lords, to which I allude, is one of the blackest kind, and peculiarly painful, because it appears to have been founded upon my own act and deed

deed, and to be given under my own hand. The accusation of which I speak, while I linger here yet a minute, is, "that of holding out to the People of Ireland a direction to give no quarter to the troops fighting for its defence." My Lords, let me say this—and if there be any acquaintances in this crowded Court—I will not say my intimate friends, but acquaintances, who do not know that what I say is truth, I should be reputed the wretch which I am not—I say, if any acquaintance of mine can believe, that I could utter a recommendation of giving no quarter to a yielding and unoffending foe, it is not the death that I am about to suffer, which I deserve—no punishment could be adequate to such a crime. My Lords, I can not only acquit my soul of such an intention, but I declare in the presence of that God, before whom I must shortly appear, that the favourite doctrine of my heart was—"That no human being should suffer death, but where absolute necessity required it."

My Lords, I feel a consolation in making this declaration, which nothing else could afford me; because it is not only a justification of myself, but where I am sealing my life with that breath, which cannot be suspected of falshood, what I say may make some impression on the minds of men not holding the same doctrine. I declare to God, I know no crime but assassination, which can eclipse or equal that of which I am accused. I discern no shade of guilt between that, and taking away the life of a foe, by putting a bayonet to his breast, when he is yielding and surrendering. I do request the Bench to believe that of me—I do request my country to believe that of me—I am sure God will think that of me.

Now, my Lords, I have no favour to ask of the Court—my country has decided I am guilty, and the law says, that I shall suffer—it sees that I am ready to suffer.

But, my Lords, I have a favour to request of the Court that does not relate to myself. My Lords, I have a brother, whom I have ever loved dearer than myself; but it is not from any affection for him alone that I am induced to make this request. He is a man, and therefore, I hope, prepared to die, if he stood as I do, though I do not stand unconnected, but he stands more dearly connected.—In short, my Lords, to spare your feelings and my own, I do not pray that I should not die;—but that the husband, the father, the brother and the son, all comprised in one person, holding these relations, dearer in life to him than any other man I know;—for such a man, I do not pray a pardon, for that is not in the power of the Court, but I pray a respite for such time, as the Court in its humanity and discretion shall think proper. You have heard, my Lords, that his pri-

vate affairs require arrangement.—I have a farther room for asking it: if immediately both of us be taken off, an aged and revered mother, a dear sister, and the most affectionate wife that ever lived, and six children, will be left without protection, or provision of any kind.—When I address myself to your Lordships, it is with the knowledge you have of all the sons of our aged mother being gone. Two have perished in the service of the King; one very recently.—I only request, that disposing of me with what swiftness, either the public mind or justice requires, a respite may be given to my brother, and that the family may acquire strength to bear it all.—That is all I wish—I shall remember it to my last breath, and I will offer up my prayers for you to that Being, who has endued us all with sensibility to feel—This is all I ask—I have nothing more to say.

Lord *Carleton*—then pronounced sentence of death on the prisoners; and these unfortunate brothers were executed on the 14th day of July 1798, to the inexpressible sorrow of a great majority of the Irish nation.

*** It is something remarkable, that these two unfortunate gentlemen were first called upon to answer an indictment for high treason on the 4th of July, the anniversary of American independence, and that they were executed on the 14th, the anniversary of the destruction of the Bastile.—Of the first day, it may be permitted us fervently to hope, that its consequences will long be of the most important benefit to the liberty and the happiness of America — Of the latter day, unhappily we must yet speak doubtfully—Ask the mis-rulers of France—ask the conqueror Bonaparte, What will be the fruits of the 14th of July 1789?

THE

TRIAL

OF

WILLIAM M. BYRNE,

FOR

HIGH TREASON.

OYER AND TERMINER.

AT a Court held by special commission for the county and city of Dublin before the Hon. Mr. Justice Crookshank, the Hon. Baron George, and the Hon. Mr. Justice Day, on the 20th of July 1798, William M. Byrne was arraigned and tried on an indictment for High Treason, of which the following is an abstract:—

FIRST COUNT—That Wm. M. Byrne on the 20th May 1798, being a false traitor, did compass and imagine the death of the King, and did traitorously and feloniously intend the said King to kill, murder, and put to death.

Overt Acts—That he the said Byrne did consult and conspire with divers other traitors, to raise rebellion and make war in Ireland, in order to overturn the government and depose the King—2. That he did procure a great number of armed men to make war in order to overturn the government, &c.—3. That he did associate with a society or brotherhood, called *United Irishmen*, and did procure a number of guns, &c. to be used in levying war, &c.—4. That he did meet with other traitors at the house of Oliver Bond in Dublin, and take accounts of the number of men and quantity of arms, raised for the purpose of carrying on said rebellion, &c.

SECOND COUNT—That the said Wm. M. Byrne, not regarding his allegiance, but intending and contriving to disturb the common tranquillity, did falsely, maliciously, and traitorously adhere to, and give aid and comfort to the persons exercising the powers of government in France, and the men of France, under the government of the said persons, then being the enemies of the King, and carrying on war against him.

The same overt acts were set forth in support of the second count as of the first.

Mr. *Attorney General* opened the case to the Court and Jury; he called their attention to the indictment, and the overt acts therein set forth in support of each count, and then stated what he had been instructed to say, would be the proof to sustain the whole charge as specified in the indictment.

EVIDENCE *for the* CROWN.

Billingham Swan being sworn, said, That he was a magistrate confidentially employed under government; that on the 20th March last, he was directed to go to the house of Oliver Bond, to apprehend a number of persons; that when he went there, he made use of the pass-word of which he had received information some days before, "where is M'Cann or Mr. Ivers from Carlow?"—that they gained admittance into a back room, where there were a number of men, one of whom was sitting at a table with pen, ink, and paper before him; that all the papers to be found in the room were seized, some of which were returns of the numbers of United Irishmen, &c. that all the men in the room were arrested, and the prisoner at the bar amongst the rest.

Christ. S. Williams proved the prisoner's hand writing on one or two of the above-mentioned papers. *

Arthur Guinness proved the hand writing of M'Cann (who was one of the persons at Bond's) on several of the papers before-mentioned.

Thomas Reynolds being sworn, deposed, That he had been a United Irishman, was once a delegate from the county of Kildare, and was acquainted with the nature of the association—that the kingdom was divided into provincial, county, and baronial meetings, which last, if too large, were again divided into districts, that the baronial and district meetings sent delegates to the county meetings, and they sent delegates to the provincial assemblies—that the design and object of the association thus organized, was to overturn the existing Constitution, and establish in its stead a Republican form of government, and to favor any men from the French who would forward their views—that the business of the baronial meetings was to introduce new members, to collect money, to settle accounts of money paid on admission, collect men and arms, and give arms and ammunition to the people—This deponent having been informed of the meeting at Bond's, he communicated it to Mr. Cope, and also told him the pass-word necessary to gain admittance "to ask for Mr. M'Can, or for Mr. Ivers of Carlow, or both"—The reason of this deponent being intrusted with the pass-word was, his having the returns from the County of Kildare of which he re-

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* These papers do not appear in the Report, therefore we cannot say positively what are their true import.

presented—This deponent having dined with Mr. Cope and many others, one day, after dinner, when the cloth was removed, the conversation turned upon United Irishmen, and this deponent said, that they were resolved, that unless Government granted a Reform, there would be a rebellion, which would lead to the destruction of the kingdom.—A great deal of conversation took place, the result of which was, that next day, in coming to town, Mr. Cope begged of this deponent for the sake of God and man, to give up the United Irishmen to atone for the many crimes they had committed, and to save this country, for they would ruin every man of property in it—This deponent was struck with what was said, and seriously meditated on the business, the result was, that he told Mr. Cope, that he believed he was acquainted with a person who was a United Irishman, and in consequence of the conversation he had with Mr. Cope, he had no doubt of being able to prevail on his friend to come forward, and that he would call on Mr. Cope in a few days—Mr. Cope then said, if such a man would come forward, he would be the salvation of Ireland—This deponent replied, that his friend was satisfied in his own mind, that *if he would come upon terms*, he would furnish to Government proofs of the conspirators, and disclose the whole of their transactions—Mr. Cope said, *this deponent's friend should be gratified to his wish, if 1000l. a year and a seat in Parliament would content him*—This deponent said, his friend's name must be kept a profound secret, at least as much as possible, and must never be prosecuted for his past misconduct, and afterwards to bring his family out of Ireland; for some time, for a year at least he should have liberty to draw on him for any sum not exceeding 500 guineas—Mr. Cope said it was no matter what sum he demanded—As soon as this was adjusted, this deponent gave Mr. Cope all the information he could, not from himself, but as from another person—This deponent has lost 630*l.* and has received 500 guineas—he told Mr. Cope of the baronial meeting at Bond's, in consequence of which the members of it have been arrested—At a meeting at Naas, this deponent on being questioned, gave Mr. Flood every assurance, "that he had not given any information of United Irishmen," and also gave the like assurances at Bond's, and would have made oath of it, if he had been required, for he was afraid of being murdered if he had not done so—This deponent, when 16 years of age, stole a piece of lute-string from his mother to give to some girl—he gave a dose of Tartar Emetic to his wife's mother when she was very ill—she died some days after, and he had heard that Mr. Withrington had accused him of poisoning her.

Thomas Miller swore, That he was a labourer, a United Irishman, and had attended their meetings. Byrne, the prisoner

er, once sent for him to go to the county of Wicklow, and told him he was appointed captain of the 112 men of the half barony of Rathdowny, and told him how to make out his returns —Witness knows James Ryan, who attended a meeting of United Irishmen, at which Byrne was present; the question among them was, whether to have a rising among themselves, or to wait for the French coming?—witness was with Byrne at a meeting of United Irishmen in Francis-street, Dublin—Byrne paid witness money for pikes, and he got 84 or 85 made by a smith—The money paid this deponent for the pikes belonging to his division, he paid to Byrne—This deponent said, he went to the Earl of Powerscourt and Lord Monck, to give information against United Irishmen, because he knew himself to be in danger—he was taken up, but gave information voluntarily —that a man taken as a rebel, was shot in fifteen minuts after —This deponent confessed, that he had stolen holly timber, but not for pike handles.

James Ryan deposed, that he was a United Irishman, had attended at their meetings, at some of which he saw Byrne the prisoner—this deponent was afraid to fight, and went voluntarily to give information.

William Cope swore to the conversation that had passed between him and Reynolds, as stated before in his testimony.

Here the case closed on the part of the prosecution.

Mr. Curran.——My Lords, and gentlemen of the jury, in this case I am Counsel for the unfortunate prisoner at the bar. It is now my duty to argue upon some points, that appear to me to be material for the jury to consider previous to their finding their verdict. Gentlemen of the jury, it is scarcely possible for an advocate to discharge his duty, without offering something like observations. I do not say this, to entitle myself to your excuse, if I should lead you to some observations on the evidences. I am Counsel for this unfortunate prisoner at the bar —unfortunate in being brought here, to answer before the Court and jury, for these charges laid against him, which he is now called upon to answer—I know, gentlemen, what he can expect from you, if he should by your verdict be declared innocent; but even if innocent, the prisoner is unfortunate in being brought to answer a charge of high treason.

He stands charged with this crime on the statute of 25th Edw. III. It was such an act of Parliament made, that it has been called a Blessed Act, and well it deserves to be so called. Our forefathers made that law, and they have long since become dust and ashes; there is no man in the profession, and there is no man not in the profession, who has a strong understanding heart, and considers that statute, who will not feel some of their emancipation.

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Gentlemen, that statute was made from the wisest motives, it was made by the wisdom of an intelligent Legislature. — The law of high treason in England, had been before that time exceedingly wide and tyranical; perhaps partly from want of much information, or from some prejudices, or perhaps from the art of printing not having extended so widely as it has since done; or from the defect of written books, and a great restriction to the reading of those books, or from the doctrine of high treason being written on by lawyers of base principles; if there was any principle at all, it was choked by pride and ignorance. The doctrine of high treason was left to float over their consciences; they had no concern for moral obligations, or affection for virtue, had no kind of regard for the interest of the people; the royal power of the state was degraded by the laws, as they stood respecting high treason before the reign of Edward 3. their wisdom was lost in idle declamation. In order to remove all doubts respecting the crime of high treason, our forefathers, in the reign of Edward 3. passed the statute which ascertains and defines what the crime of high treason is. You must see that unless you protect the power of the Constitution, nothing can be protected.—Therefore, gentlemen of the jury, that statute of high treason, was made in the reign of Edward 3. to guard the State and the Constitution from abuses. The State must be supported, whether it was merely Monarchical, Aristocratical, or Democratical; the supreme power, whatever it may be, must be protected; therefore gentlemen of the jury, it was the highest wisdom to guard and shield the department of the supreme power, and the first object of that protection was to throw a rampart about the sacred person of the King of these kingdoms.

It is necessary for you to consider the provision made in the statute for the preservation, not only of the King, but of the Queen, and heir apparent. To compass or imagine the death of either of these illustrious personages is high treason. You see, gentlemen, that the statute is made to guard the person of the King; it specially provides for his personal safety; it enacts, that any person who shall levy war against the King, or shall compass or imagine the death of the King, is guilty of high treason; if any man levy war to overturn the Constitution, he shall suffer as a high traitor. It is necessary to show that by the words of this statute, that levying war within the realm, or without the realm, is high treason against the King, and the party shall suffer as a high traitor.

The prisoner at the bar, in this case, is indicted upon the first and third clauses of this act—"if any man shall compass "or imagine the death of the King, or attack the King by open

"open deed." In the indictment, the prisoner is charged for compassing and imagining the death of the King, and secondly for adhering to his enemies. It is for you to consider and determine, whether the prisoner at the bar is guilty of those crimes or not.

Gentlemen of the Jury, in times like these, it is, God knows, hard to efface the trace of human passions, or check the effusions by loyalty; and yet, I trust, as I know every man of you, you will do your duty between the Crown and the Subject. I have so much respect for you, that I take the best way of warning you against the effects of your loyalty. In former reigns, before the reign of Edward 3d. the law of high treason took so wide a field of obscurity, that it was difficult to ascertain what was the crime of high treason; and we find that unfortunate men have suffered an ignominious death, upon very slight grounds of imagining the King's death. As the King had no one to advise him, to ascertain the crime, it appears that many were found guilty of treason, and were executed; and the act of Edward 3d. was made to point out, precisely and clearly, what constituted the crime of high treason—it protected the rights of the Crown, and was also a protection to the people.

Gentlemen of the Jury, you will see whether my observations are just; that before the stat. of Edw. 3. the law with regard to high treason was uncertain. The stat. of Edw. 3. is a law of general justice; it has now the effect of convalescence;—it establishes the boundaries of the law of high treason. It is now 300 years ago since that law was made—That act is the security for the preservation of the life of the King, on which the felicity of his subjects depend; that statute should be preserved immaculate as the spotless virtue of a virgin. It is necessary for you to recollect, that in the reign of Henry VIII. in whose reign there were continued struggles to maintain and extend the prerogative, that the law of high treason made by Edw. III. was greatly entrenched upon. In the reign of Wm. III. it was amended, and did, in fact, make a part of the Bill of Rights; it stated what the law was with respect to criminal prosecutions, that every man charged with the crime of high treason, should be furnished with a list of the jury impannelled, and with a list of the witnesses to be examined; that all the overt acts should be set forth in the indictment; and there must be *two* witnesses to prove an overt act, before it was in the power of the Jury to convict him of the charge or charges made against him by the Crown.

The statute of Wm. III. was passed in England, and, I know, it will be said, it was not passed here, and is not now the law of Ireland, and therefore *two* witnesses to prove an overt act, are

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not what the law requires in this country;—but why the law did not require that in Ireland, there should be two witnesses to prove an overt act, I know not; it may be attributed to some former servants of the State, who are long since deceased, who perhaps, thought it would be doing a good thing to retrench from the Irish Constitution; and though it was necessary to have two witnesses to prove an overt act of high treason, in England, it was not necessary to have two witnesses to such a charge in Ireland. Certain it is, that by the law of this country, two witnesses to prove an overt act are not specially required. In my opinion, there was very little humanity in omitting in the laws relative to high treason, that there should be in Ireland, as well as in England, two witnesses to prove an overt act of high treason; my opinion is founded upon great deliberation on the subject, in the course of several years, aided by the highest possible law authorities, that the jury ought to require the most satisfactory evidence of guilt before they pronounce upon the life of a fellow subject, when, if they did so in England, without two witnesses to prove the charge, it would be murder: I aim not to practice upon the warmth of your hearts, but I feel the warmth of my indignation, to see that in Ireland a man accused of high treason, may be convicted of high treason without two witnesses to an overt act, which in England they cannot.

Gentlemen of the Jury, you are to determine upon the guilt or innocence of the prisoner; you are to decide, whether he did commit these overt acts; whether he did compass and imagine the death of the King, and of adhering to the King's enemies. Gentlemen, you know as well as I do, that it is your province to determine whether the evidence that is given (*if* you believe the witness) does establish the charge—It is therefore material for you to consider his evidence minutely, upon the rules of evidence. Suppose you in your little mansions preside as the fathers of your family, you would not believe a tale told by a vindictive mind; you would require some further proof before you pronounced on the guilt of the child accused—I say, gentlemen of the jury, in the bosom of your own little families, you would require some further proof besides a single witness, to see if the accusation deserved to be believed.

Gentlemen, the question for you to decide is, whether the evidence given this day by the witness, *is deserving credit?* and you are to judge whether his testimony supports the charge he has brought forward to support. The evidence that has been given, consists of the parole testimony of Mr. Reynolds; and you will consider the written evidence (as it has been called), and see how far it supports the charge; you will consider how far they corroborate and support one another. You will consider what degree of credit you will give to the person who has come

come forward and given his testimony, to support the charges in the indictment, a person who had been one of the United Irishmen; who had formed the abominable intent of compassing and imagining the death of the King—I say the intentions of that body are abominable—Here give me leave to say, in the presence of the learned Judge, that in some news-papers it was said, I vindicated the society of United Irishmen at some former trial—I deny it; for there is no one that does not know, there can be no man more attached to my King and Country than I am.

Mr. *Baron George*—If any advocate had vindicated the conduct of the society of UnitedIrishmen in raising this rebellion, I would have done my duty and lodged him in the body of the gaol.

Mr. Curran—Gentlemen, you have had before you in the present trial, the parole testimony of Mr. Reynolds, and the papers that have been given in evidence.—Give me leave now to ask, If you are satisfied in your consciences, upon the evidences adduced before you, that there has been a conspiracy to destroy the person of the King? or are you satisfied there has been a conspiracy to levy war, or do any other unlawful act?

As to the papers; if you believe they were found in the room where they assembled, they are evidence against all the persons who have been, or who may be called on to answer for the crimes with which they are charged. You will determine whether the evidence of Mr. Reynolds does prove, that the prisoner at the bar is guilty of compassing or imagining the death of the King. See what the testimony of Mr. Reynolds is—[Here the learned advocate, with great accuracy, commented on the whole of Reynolds's evidence]—He said to Mr. Cope, that his, Reynolds's friend, would come forward and give information;—he now comes as a public informer,—he was first a traitor to his King, and he afterwards became a traitor to the accomplices in his guilt.

COURT.—That does not prevent his giving evidence in a Court of Justice.

Mr. Curran in continuation.—I am stating it in this way: —He says he was an accomplice in the crime charged to the prisoner at the bar;—if the jury believe that Mr. Reynolds did break his oath of allegiance, they will weigh his evidence with great circumspection. And may they not say they believe in the innocence of the prisoner notwithstanding Mr. Reynolds has testified to his guilt?—In a case of this kind where a secret conspiracy is charged against the prisoner, an informer is by law admitted to give his testimony; but suppose he should

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give evidence of matters which were not true, no human being could contradict him, there would be no possibility of protecting the accused against the accuser.

A paper was given in evidence, of a letter from M'Cann to the prisoner, mentioning Lord Edward Fitzgerald. We cannot call Lord Edward Fitzgerald to answer the charge; he has been called to appear before a Court, where we must all of us appear! — He is no longer amenable to an earthly tribunal!—He is gone to that place where no false testimony can affect him!

As to Mr. Reynolds, you gentlemen of the jury, will judge of the credit of his testimony. It is evident he is not a foolish man; he had not the plea of ignorance for the shameful breach of his oath of allegiance; yet he now comes forward, to give his evidence against his accomplices; you will judge of his evidence, and you will hold the balance with the greater care and steadiness, as the crime charged is of the greatest magnitude, and determine whether the innocence or the guilt of the prisoner at the bar preponderates. You will observe one expression of this witness: he said, "he had received 500 guineas as a "compensation for his losses;" he said, "I think I will take "no more; but ask me that question to-morrow, perhaps I "may change my mind."—He told you he had a conversation with Mr. Cope about United Irishmen: Mr. Cope expostulated in a kind of a sermon, on the abominable and mischievous conduct of the Society of United Irishmen, of the horrid murders and depredations they had committed, and affirmed, that the whole property of the kingdom was endangered. Thus through the calibre of Mr. Cope's eloquence, was struck the mighty Colossus, Mr. Reynolds, with the crimes of these deluded people! —And says Mr. Reynolds, "I know a friend, who is an United Irishman, and I will endeavour to prevail on him to come forward and give information against them." Says Mr. Cope, "for such a man no reward would be too great; for he would be the salvation of his country."

We shall produce evidence to shew some traits of the moral conduct of Mr. Reynolds, relative to a bond given to a Mrs. Cahil; and if we prove that he is such a man as you may judge not deserving of credit, and if you have a rational doubt in your mind, that the prisoner at the bar is not guilty, then you will bring in your verdict of acquittal—As to the evidence of Miller and Ryan, they do not, in point of law, prove the charges laid in the indictment against the prisoner at the bar; to support this position, the learned advocate quoted the law as to overt acts in cases of high treason, in Sir Michael Foster, Blackstone, and the opinion of Judge Eyre, on the subject of high treason.

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He concluded by entreating the jury to consider maturely the evidence; and if the jury had any reasonable doubt in this case, they would give such a verdict as would acquit the prisoner, and stop the effusion of human blood.

EVIDENCE *for the* PRISONER.

Ann Fitzgerrald swore, That she was well acquainted with Reynolds (who was her nephew), that he was not worthy of credit on oath.

Mary Molloy also swore, That she did not conceive Reynolds worthy of credit on oath; and her reasons were, his conduct towards Mrs. Cahil, to whom he pretended to have given his bond for 50*l.* and his note for 20*l.* that on this deponent looking over the bond which he had sent toMrs.Cahil(who was old and blind) she found that his name was not mentioned in it.

Eleanor Dwyer swore, That she was acquainted with Mrs. Cahil, that Mrs. Reynolds (wife to the witness of that name) came toMrs Cahil and obtained from her the bond, and Mrs. Fitzgerald was angry with her for giving it up.

Dr. Beasely and Robert Gore deposed, That they had seen the prisoner take the oath of allegiance as a yeoman, and they had always thought he was a loyal man.

The evidence being closed,

Mr. Bushe addressed the Court and Jury on behalf of the prisoner; he concisely stated the law applicable to the prisoner's case, and concluded by animadverting on the testimony, and urging again the arguments that had been before pressed by Mr Curran.

Mr. O'Gready replied to the prisoner's counsel, and observed upon the law and testimony at some length.

Judge *Crookshank*.——Gentlemen of the Jury, I shall endeavour to lay before you as accurately as I can, the evidence that hath been given in this case; in doing which, I hope my brothers on the bench will supply me with any circumstances that I may happen to omit. I shall mention to you some leading acts of the prisoner, that came more particularly under consideration, and shall make such observations on the evidence, as may assist you in forming the verdict which you are to give. You are the constitutional judges in this case; you are to banish from your minds every thing you have heard relative to this case, and found your verdict entirely upon the evidences which have this day been produced before you.

Gentlemen of the jury, the charge brought against the prisoner is a charge of high treason, the indictment extends this charge into two counts; the first, for compassing the death of the King; and the second is, for adhering to the King's enemies

mies. The first overt act is for conspiring to make a rebellion, and levying war against the King, and for a conspiracy to depose the King and overturn the constitution; and for conspiring about the means of raising armed men, and for associating with a body of men called *United Irishmen*, for the purpose of overturning the government of this country by force—and that the prisoner did, with other false traitors, assemble and take returns of the number of armed men raised in the several baronies and parishes, and the quantity of arms and ammunition to be furnished. These number of overt acts are laid in the indictment to support the two principal counts which have been stated to you.

Gentlemen of the Jury, let me claim your attention to what the law of the land is relative to high treason, viz. compassing or imagining the death of the King—levying war against the King and adhering to his enemies; all these are declared to be high treason. In my mind, the charge of high treason has been fully proved for you to find a verdict for the Crown. None of you, gentlemen, who are of the present jury, was before on any jury upon a trial of this kind; I have stated what the law on high treason is; and, in my opinion, it is not necessary there should be precise evidence, that the man charged did actually intend to take away the life of the King; but if he committed any act of treason as levying war against the King, it is compassing and imagining the King's death, because the life of the King may thereby be endangered; and therefore it is the law says, the levying war is a compassing and imagining the death of the King. Inviting the French to invade this kingdom, is a compassing and imagining the death of the King, because the King's life may be endangered thereby—A conspiracy to to levy war was not a conspiracy to compass the death of the King, was said by a gentleman in argument; but, by the highest law authorities it is held, that any man who enters into a conspiracy to levy war, is guilty of compassing the death of the King.

The next charge against the prisoner at the bar is, that he did conspire to depose and deprive the King of and from his royal authority, and to alter by force the government of this kingdom, and this is treason if proved. Let me apply the evidence you have heard, that the prisoner at the bar did conspire to alter by force the government of this kingdom.—In this point was the evidence parole and written produced—and here I will state the evidence of Mr. Swan. He told you he went to the house of Oliver Bond, and there seized the prisoner at the bar, who was there assembled, as delegate from the county of Wicklow, and belonging to the society of United Irishmen, and in whose possession the several papers produced and given

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in evidence were found; and from the parole testimony and written evidence produced, you, gentlemen of the jury, will determine on the verdict which you will give; this case is solely left to your decision—[Here the Judge went through the whole body of evidence, and commented on every circumstance that could illustrate or explain the evidence which had been given in; and concluded by remarking to the Jury] that there was nothing in the evidence that was not perfectly intelligible to every understanding, and did not entertain any doubt, but that the jury would pronounce such a verdict as the evidences would justify them in.

Mr. Baron George and Mr. Justice Day addressed the Jury nearly to the same effect.

The jury retired about 3 in the morning of the 21st of July, and, in about 20 minutes after, returned with a verdict of GUILTY.

THE

TRIAL

OF

OLIVER BOND

FOR

HIGH TREASON.

OYER AND TERMINER.

AT a Court of Oyer and Terminer and general gaol delivery, consisting of the Right Hon. Lord Carleton, Hon. Mr. Justice Chamberlaine, Hon. Mr. Baron George, Hon. Mr. Justice Crookshank, and the Hon. Mr. Justice Day, held for the county of the city of Dublin, Oliver Bond of Dublin, merchant, was arraigned and tried on an indictment, of which the following is an abstract:*

FIRST COUNT—That Oliver Bond not regarding his allegiance, falsely, wickedly, and traitorously did compass and imagine the King, off and from his royal state, crown, and government of this his kingdom of Ireland, to depose and deprive, and the said King to kill, put to death, and murder.

Overt Acts—That the said Bond, in order to effect the said evil purpose, did conspire together and meet with divers other false traitors, &c.—2. That he did with other traitors meet and make resolutions for the purpose of procuring arms, ammunition, &c.—3. That he did meet and conspire with others to overturn the government, &c.—4. That he did with divers others meet and assemble together to raise rebellion, and to procure arms to aid and assist in said rebellion — 5. That he did persuade and cause one Thomas Reynolds to become a Colonel in the county of Kildare, for the purpose of aiding in said rebellion—6. That he did administer the unlawful oath of an *United Irishman* to the said Thomas Reynolds—7. That he did collect sums of money to furnish arms and ammunition in said rebellion.

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* An attempt was made by Mr. Curran, to postpone the trial on account of the absence of Mary Molloy, a witness for the prisoner (whose testimony see in the trial of Byrne *ante*), and also on the ground that some publications which lately appeared in the News-papers, might tend to prejudice the public mind against him—But he was over-ruled by the Court.

SECOND COUNT.—That the said Oliver Bond, with intent to subvert the government and constitution, unlawfully and traitorously was adhering to, aiding and comforting the persons exercising the powers of government in France, and the men of France under the government of the said persons, then being enemies of the King.

The same overt acts were laid in support of this count as of the first.

Mr. *Attorney General*, on the part of the Crown, opened the case to the Court and Jury. He observed, that he never in any moment of his life had reason under impressions of more solemn feeling, or on an occasion the importance of which claimed more exertion on his part, or attention from the public—On the very night (said he) that Lord Moira,* with a degree of captivating eloquence, for which that Nobleman is distinguished, was arguing with the Lords of Ireland, where he had been so long a stranger, and respecting which he had obtained very bad intelligence indeed, for I cannot suppose his Lordship guilty of deliberate mis-statement—on that very night, when he was endeavouring to shew that there were no traitors in Ireland, that the innocent were accused, the accusers were guilty; conspirators in the same capital, were, by a formal resolution, giving the lie to what this able, eloquent, and popular character was urging in parliament."—He then proceeded to state what he had been instructed to say would turn out in evidence, and concluded with some remarks as to the manner in which the treasons of which the prisoner was charged had originated out of the French Revolution, the evils and destructive tendency of which were incalculable.

EVIDENCE *on the part of the* CROWN.

Thomas Reynolds being sworn, said, That in February 1797, he was made a United Irishman, by Oliver Bond, at the Brazen-head in Bridge-street, Dublin—That he was well acquainted with Bond, and has conversed with him on political affairs frequently—that the object of the society called United Irishmen, was to overturn the existing Constitution, and to establish in its stead a Republican form of government—that the society was spread over the whole kingdom; that it was divided into pro-

* The Earl of Moira may perhaps be better known to some of our American readers by the name of Lord Rawdon, in which character he commanded the British army, for a time, in South Carolina, during the Revolutionary war, and where he ordered the American Colonel Hynes to be executed.—At the death of his parents, he came into possession of considerable estates both in England and Ireland, by right of his mother, who was of the Hastings' family (see English Peerage) — He is a Nobleman of more than common popularity, and has constantly attached himself to what is called the *Prince's party*, with whom there are occasional junctions with the *Fox party*, who say they are of the *Whig Party*.

provincial, county, and baronial assemblies, which last, when too large, were again divided into districts; that the districts and baronies sent representatives to the county, which sent delegates to the provincial meetings—That Lord Edward Fitzgerald wished this deponent to become a delegate for the county of Kildare—that Bond renewed the request of Lord Edward, and also pressed this deponent to become a colonel for the barony of Kiltea—Bond said, that every man who wished well to the cause, ought to step forward as a delegate—This deponent attended a meeting at the 19-mile house, where he and every other member took an oath of secrecy—there was then an election of delegates to serve three months—Michael Reynolds, who was present at that meeting, said there was to be a meeting on the Monday following at Bond's, and told this deponent to ask for M'Cann or Ivers from Carlow, and he would be admitted; which meeting this deponent could not attend, owing to his being so far off—when he went to Dublin, M'Cann refused to tell him when the next meeting would be at Bond's, as he had not his returns with him, and accordingly he went to the country to procure them.

This deponent dined at Sir Duke Giffard's at Castle Jordan, in company with Mr. Cope, Capt. Fitzgerald, Lord Wycombe, Mr. Maxwell, and Sir Duke.—There was some conversation on the current politics of the times, and the affairs of the *United Irishmen*—The next day, this deponent returned to Dublin in a chaise with Mr. Cope, who resuming the conversation of the preceding day, lamented very much the injurious tendency of the United Irishmen—This deponent told Mr. Cope, that he had a friend who was of that fraternity, whom he would endeavour to persuade to give information to Government, to atone for the crime he had committed by his having joined them; to which Mr. Cope replied, that such a man ought to be considered the saviour of his Country. — This deponent said, if his friend did come forward, it would be merely to satisfy his own mind; that he would call on Mr. Cope in a day or two, and, in the interval, see his friend and speak with him.—Mr. Cope said such a man ought to be gratified with a thousand or fifteen hundred a year, and a seat in Parliament.—This deponent said, he mistook him; his friend only wanted to be reimbursed for his expences, as it was necessary that he should leave the kingdom for a little time, and to stipulate that he was not to give evidence against United Irishmen, and the channel whence the information came was to be kept secret.—Mr. Cope bid this deponent mention any sum, and he would agree to it.—This deponent said, his friend's expences and losses might amount to five hundred guineas, and desired he might be at liberty to draw on him for that sum.—Mr. Cope agreed to every thing, and this deponent then gave all the information

in his power, and told of the meeting at Bond's on the 12th March, &c.—On the Saturday previous to the meeting, this deponent saw M'Cann at Bond's house, and shewed him his returns, whereupon M'Cann told him the meeting was to be at Bond's on the Monday following, and to ask for M'Cann or Ivers of Carlow, and he would be admitted.—This deponent went immediately and informed Mr. Cope of all that had passed, which he promised to keep secret.—This deponent did not attend the meeting.

On Sunday, this deponent called at Leinster House, and saw Lord Edward Fitzgerald, who shewed him a paper from Capt. Saurin of the Lawyers Corps, of orders to that Corps, stating, that in case of any tumult to repair to Smithfield, and be furnished with ball cartridges, and, in a note, to "keep their orders secret"—After Lord Edward read the paper, he said he thought that Government intended to arrest him, and that he would go off to France, to hasten an invasion of this country, and to send frigates, as he had interest with one of the French Ministers; said he did not approve of a general invasion at first, and remarked that if any accident happened to overturn it, it would totally destroy the business both here and in France—He said he thought Wexford an unprotected place, and would answer for a rallying point against the country, and if it were committed to him, he would engage it would answer. After this, Lord Edward paced the room a while, and then said,—"It is impossible, government cannot be informed, no, it is impossible—government can never be able to find out where the provincial meetings meet!"—This deponent replied "it was impossible!"

This deponent saw Lord Edward several times after the arrest of Bond; at one of the interviews, he gave this deponent a paper an address to the United Irishmen of Kildare County, he said he had some money in his hands as treasurer of the Barony of Ophaly, which he would pay over to this deponent, as treasurer of the county—This deponent carried the address down to the county meeting, it was read, and then at the request of a member burnt—the substance of the paper was, to fill up the vacancies by the arrest of Bond, &c. as soon as possible, for very soon they would be called upon, they might rely upon his being in his place on a short day, and desired them not to think any thing of what had happened—Some time after Lady Fitzgerald gave this deponent 13*l.* to be laid out in the defence of the prisoners to be tried at Naas—This deponent was told by a delegate from a baronial committee, that his practices were known, and also heard, that a delegate from Carberry committee said, that Michael Reynolds had brought down a charge against him for the information, which they said he had given

about the meeting in Oliver Bond's house.—He was afterwards summoned to meet at Bell's house in Kildare; *he there gave the most solemn assurances that he had not given any information!* —This deponent was preparing to leave the country, but a party of the Cork Militia came to his house, put him under arrest, staid seven or eight days, drank his wine, and broke things—This deponent afterwards set out for Dublin, but changing his mind on the way, he returned to his house, and was there arrested by the Slane cavalry, who brought him up to Dublin. On his arrival he was censured by both parties; by one, for being an United Irishman, and by the other for giving information; he therefore determined to lay his whole conduct before the Court and his country at large—About four or five days before the meeting at Bond's, this deponent drew upon Mr. Cope for 300 guineas, and some time after 200; it was his determination to leave the kingdom; his losses amounted to about 630*l.* —After Bond's arrest he went down to attend the county meeting, that he might not be suspected.

This deponent directed a servant to administer a dose of Tartar Emetic to his mother-in-law, and Capt. Withrington (her son) said, he had poisoned her. She was a large corpse, and on the fourth day there was a pitched sheet got to wrap her corpse in—This deponent was indebted to Mrs. Cahil, who was old and blind in the sum of 75*l.* he gave her his bond for 50*l.* and his note for 25*l.* but, *by mistake*, the bond he gave her was not perfected; the money has been since paid, except 10*l.* which he had tendered—This deponent took an oath when made a United Irishman, and when he was made a Colonel; he also took the oath of allegiance, and had taken an oath in this Court, which he considered as absolving him from all oaths he had taken as a United Irishman.*

Bellingham Swan, a magistrate, deposed, That having been apprized of the meeting to be held at Bond's on the 12th March last, he took with him fifteen Sergeants of different regiments, dressed in coloured clothes, and by means of the pass word, "where is M'Cann or Ivers of Carlow," was admitted—he apprehended Bond in the shop or warehouse; he then darted up into the room, where he found M'Cann, Byrne, and several others, all of whom he arrested, and also seized all the papers he could find—Bond made not the least resistance, neither did he appear to be at all alarmed at his apprehension.

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* "An *Approver* comes forward; the plan which he discloses may be true, or it may be of his own formation—but, *if convicted, in the smallest instance, of wilful and corrupt perjury*, I do not see how any man can say, that it does not create a doubt of his testimony; and you have been truly told, "that doubt in the present case is acquittal." —*Per* Mr. Justice Chamberlaine, *vide ante* 193.

Sergeant Dugan corroborated the testimony of Swan, as to the arrest of Bond in the warehouse.

Francis Stroker, W. W. Vernon, and A. Guinness proved the hand-writing on certain papers which were produced and read to corroborate the parole evidence—but as these papers were not in the report at large, we cannot insert them

Mr. Cope confirmed the testimony of Reynolds as to the intercourse between them.

Here the case closed on the part of the prosecution. .

Mr. CURRAN.——My Lords and Gentlemen of the Jury, I am Counsel for the prisoner at the bar—it is my *duty* to lay his case before you—It is a *duty* that at any time would be a painful one to me, but at present peculiarly so; having in the course of this long trial, experienced great fatigue both of mind and body, a fatigue I have felt in common with the learned Judges who preside on the Bench, and with my brethren of the Bar. I feel, as an advocate for my client, the duty of the awful obligation that has devolved upon me.—I do not mean, gentlemen of the jury, to dilate on my own personal fatigues, for I am not in the habit of considering my personal ill state of health, or the anxiety of my mind, in discharging my duty to clients in such awful situations, as in the present momentous crisis; I have not been in the habit, gentlemen of the jury, to expatiate to you on personal ill health; in addressing myself to jurors on any common subject, I have not been in the habit of addressing myself to the interposition of the Court, or to the good-natured consideration of the Jury, on behalf of my client. I have mentioned indeed my own enfeebled, worn-out body, and my worn-out state of mind, not out of any paltry respect to myself, nor to draw your attention to myself, but to induce you to reflect upon this; that in the weakness of the advocate, the case of my client, the prisoner at the bar, is not implicated; for his case is so strong in support of his innocence, that it is not to be weakened by the imbecility or the fatigue of his advocate.

Gentlemen of the jury, I lament that this case has not been brought forward in a simple, and in the usual way, without any extraneous matter being introduced into it, as I think in justice, and as I think in humanity, it ought to have been. I lament that any little artifices should be employed upon so great and solemn a case as this, more especially in desperate times, than upon more ordinary occasions; some allegations of criminality have been introduced, as to persons and things, that ought not, in my opinion, to have been adverted to in a case like this. What, for instance, has this case to do with the motion made by Lord Moira in the House of Lords in Ireland, in February last, or the accidental conversation with

Lord

Lord Edward Fitzgerald?—If you have a feeling for virtue, I trust that Lord Moira will be revered as a character that adds a dignity to the Peerage. What made that noble character forego his great fortune, to quit his extensive domains, and the tranquillity of a philosophic mind, but in the great and glorious endeavour to do service to his country?—I must repeat he is an honour to the Irish Peerage. Let me ask, why was the name of Lord Moira, (or Lord Wycombe, who happened to dine at Sir Duke Gifford's) introduced into this trial? what has the motion which Lord Moira introduced in the House of Lords to do with the trial of Mr. Oliver Bond on a charge of high treason?

Gentlemen of the Jury, you have been addressed as against a person, by whom a fire has been supposed to have been kindled, and this too at the period of its being extinguished.—[Some ignorant persons in the crowded gallery having created some noise in the Court, prevented the learned advocate a few minutes from proceeding—The Court said, they would punish any person who dared to interrupt the counsel for the prisoner, and said they hoped Mr. Curran would be able to proceed in stating the prisoner's case.]

Mr. Curran in continuation—I have very little hope to be able to discharge my duty, but I impute the interruption to mere accident; I cannot suppose it was levelled against me, but I am afraid it was excited by prejudice—Gentlemen of the jury, I was cautioning you against being prejudiced against my unfortunate client; I fear there is much reason why I should caution you against the influence of any prejudice against the prisoner at the bar. You are to decide on your verdict by the evidence given, and the evidence that on the part of the prisoner will be laid before you, and you will see the evidence does not support the prosecution. You will banish any prejudices, and let your verdict be the result of cool and deliberate investigation; and not given in the heat of the season, when mens' minds may be heated by the circumstances of the times. I shall lay before you the case of my client, to controvert the evidence given on the part of the prosecution, and shall offer to your consideration some observations in point of law, under the judicial controul of the Court as to matter of law. I will strip my client's case from the extraneous matter that has been attempted to be fastened on it. I feel, gentlemen, the more warm, when I speak to you in favour of my client's innocency, and to bring his innocency home to your judgments. I know the honesty and rectitude of your characters, and I know my client has nothing to fear from your understanding.

It is my duty to state to you, we have evidence to prove to you, that the witness on the part of the prosecution is unde-

serving of credit, and it is my duty to apprize you, that it is your duty to examine into the moral character of the witness that has been produced; and it is of the utmost concern you should do this, as your verdict is to decide on the life or death, the fame or dishonour, of the prisoner at the bar. With respect to prosecutions brought forward by the State, I have ever been of opinon, the decision is to be by the jury, and as to any matter of law, the jury do derive information from the Court, for jurors have, by the constitution, a fixed and permanent power to decide on matter of fact, and the letter of the law the Sovereign leaves to be expounded by the mouth of the King's Judges. Some censure on former occasions hath fallen on former judges, from a breach of this doctrine. Upon a former occasion I differed in opinion from the learned judge who then presided, as to what I conceived to be the law, as to what is to be construed in the law of high treason, as to the compassing or imagining the death of the King; I am not ashamed of the opinion in the point of law I entertained; I never shall be ashamed of it. I am extremely sorry I should differ from the Bench in opinion on a point of law, but judges have had different opinions on the same subject. Where an overt act is laid of compassing and imagining the death of the King, it does not mean in construction of law, the natural dissolution of the King, but where there was not the fact acted upon, but confined merely to the intention a man had, the proof of such intention must, according to Lord Coke, and Sir M. Foster, be proved by two witnesses in England; the stat. of Edw. III. provides against the event of the death of the King by any person levying war, whereby his life might become endangered. The proof of such overt act must in England be substantiated by two witnesses; how it comes not to be so settled and required in Ireland, is not accounted for.

Before the stat. of Edw. III. the law relative to high treason was undefined, which tended to oppress and harass the people, for by the common law of England, it was formerly a matter of doubt whether it was necessary to have two witneses to prove an overt act of high treason. Lord Coke says, that in England there must be two witnesses to prove an overt act; it seems he afterwards was of a contrary opinion: but in the reign of William III. a statute passed, and by that statute it appears there must be two witnesses, but when that statute came to be enacted here, the clause relative to there being two witnesses to an overt act of high treason is not made the law in Ireland, but why it was not required in Ireland is not explained. By the English act of William III. in England, the overt act must be proved by two witnesses, but it does not say so in Ireland: but as the common law of England, and the common law of Ireland

land is the same, the consciences of an Irish jury ought to be fully satisfied, by the testimony of two witnesses to an overt act; but, on this point, however, some of the Irish Judges are of opinion, that two witnesses are not in Ireland required to substantiate an overt act; therefore their opinion must be acquiesced in. Let me suppose that Confucius, Plato, Solon, or Tully, or any other great philosopher, was of opinion, on any particular point, as suppose, for instance, that on the statute of William III. in order to have a just and equal trial, there must be two witnesses to prove an overt act; Blackstone and Montesquieu are of opinion, we should have the equal protection to our liberties, why then should not a jury in Ireland require the same evidence *i. e.* two witnesses here, as well as in England? —The learned counsel referred to the statute of Edward III. the act of King William III. on high treason, Blackstone's Commentaries, Montesquieu's Spirit of Laws, Coke, and Foster's Pleas of the Crown. *

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* It may not be here amiss, for the information of the general reader, to draw together some of the authorities and opinions of the most learned sages of the Law, concerning this so frequently contested point in the Irish Courts of judicature, i. e. *the number of witnesses necessary by the common law to a conviction for high treason.* It is proper however to premise, that the history of the English Government evinces, that the proceedings in cases of High Treason have ever been more or less arbitrary, in proportion as the prosecuting power has been more or less strong, or deaf to the sentiments of justice and humanity.

In England, an act of parliament was passed 1 Edw. 6. *requiring two lawful accusers* (which was interpreted to mean, *two lawful witnesses*) in all cases of treason—and in 1. Philip and Mary, another act was passed, declaring "that all trials of treasons shall be according to the course of the common law"—These two conflicting statutes gave rise to various opinions doubts, and uncertainties in that country, which were at length finally put to rest by the statute of 7 William 3. which positively and distinctly required two witnesses. As however none of those statutes extended to Ireland, and as the Irish parliament passed no law upon the subject, † the number of witnesses necessary to a conviction for high treason remains to be decided by the ancient common law of England, which was introduced into Ireland as it stood prior to the reign of Henry 7.

Mr. Justice Foster, in his Discourse on High Treason, says, that "It hath been generally agreed, and I think upon just grounds (though Lord Coke hath advanced a contrary doctrine) that at common law one witness was sufficient in the case of treason, as well as in every other capital case—F. C. L 233

Sergeant Hawkins, in his Pleas of the Crown, c. 25, s. 129, expresses himself thus, "It seems that before the 1 of Edw. 6. no certain number of witnesses was required upon the indictment or trial of any crime whatsoever; for it seems to be generally agreed, that the statute of P. and M. in restoring the order of trial by the course of the common law, took

† The Minority did move for such an Act to be passed by the Irish Parliament, but the then Attorney General (Fitzgibbon, we believe) sternly said, "that the Irish were not fit for such a law!"

Gentlemen of the jury, let me state to you, in the clearest point of view, the defence of the prisoner at the bar, and see what has been the nature of the evidence adduced.—The prisoner at the bar is accused of compassing or imagining the death

took away the neceſſity of two witneſſes in all caſes within thoſe ſtatutes, from whence it plainly ſeems to follow, that they were not required by the common law." After noticing that a contrary opinion has been held by ſome, he proceeds thus, " However the law might have ſtood in relation to theſe matters before the Conqueſt, it ſeems to have been wholly altered long before the ſtatute of Edw. 6. and I rather incline to this opinion, ſince I find it ſo little ſupported, by the generality of the authorities cited by Sir Edward Coke for the proof of the contrary."

Here it is worthy of remark, that the paſſage in Foſter ſeems to be a mere *obiter dictum* of the author, in ſupport of which not a ſingle argument is advanced nor authority cited; andHawkins has evidently grounded his opinion upon the ſtrong inference to be drawn from the ſtatutes, and the ſlight manner in which Coke was ſupported in a contrary opinion by the generality of the authorities he had cited; but he does not pretend that any of them contradict what his Lordſhip has advanced.

Now let us hear Lord Coke, and obſerve how far he is ſupported by reaſon and the opinions of other great men—" And it ſeemeth (ſaith his Lordſhip) that by the ancient common law, one accuſer, or witneſſe, was not ſufficient to convict any perſon of high treaſon; for in that caſe where is but one accuſer, it ſhall be tried before the Conſtable and Marſhal by combat, as by many records appeareth.—But the Conſtable and Marſhal have no juriſdiction to hold plea of any thing which may be determined or diſcuſſed by the common law—And that two witneſſes be required appeareth by our books, and I remember no authority in them to the contrary; and the common law herein is grounded upon the law of God, expreſſed both in the Old and New Teſtament—" At the mouth of two witneſſes or three witneſſes, ſhall he that is worthy of death be put to death; but at the mouth of one witneſs, he ſhall not be put to death."——Deut. 17. 6, Matt. 18. 16, John 18, 23, 2 Cor. 13. 1, Heb. 10. 28.

Sir Thomas Raymond's report of Lord Stafford's caſe (408) contains the following paragraph, " And upon this occaſion, my Lord Chancellor in the Lords' Houſe, was pleaſed to communicate a notion concerning the reaſon of two witneſſes in treaſon, which he ſaid was not very familiar he believed; and it was this, anciently all or moſt of theJudges were churchmen and eccleſiaſtical perſons, and by the canon law now, and then in uſe all over the Chriſtian world, none can be condemned of hereſy, but by two lawful and credible witneſſes; and bare words may make a heretick, but not a traitor, and anciently hereſy was treaſon; and from thence the Parliament thought fit to appoint, that two witneſſes ought to be for proof of high treaſon."—From this notion of the Lord Chancellor's, the inference is very ſtrong, that men whoſe partiality to the civil law induced them to decide, that two witneſſes were neceſſary in caſes of heretical treaſon, would have introduced the general rule of that law, in that reſpect as applicable to every other ſpecies of treaſon—Add the ſound reaſon given byBlackſtone—"In caſes of treaſon (ſays he) there is the accuſed's oath of allegiance, to counterpoiſe the information of a ſingle witneſs; and that perhaps may be one reaſon why the law requires a double testimony to convict him; though the principal reaſon un-

death of the King, and of adhering to the King's enemies. The evidence against him is *parole* and *written* evidence. Now, gentlemen of the jury, I will venture to observe to you, that as to the *written* evidence, if suffered to go before you by the Court, it is only as evidence at large, but as to the credibility of it, that is for you to decide upon.—Mr. Reynolds, in his parole testimony, has sworn, that he was made a United Irishman by the prisoner at the bar; Mr. Reynolds says he was sworn to what he considered to be the objects of that society; he stated them to you, but whether true or false, is for you to determine, by the credit you may give to his testimony. This is the third time Mr. Reynolds has appeared in a Court of Justice, to prosecute the prisoners. He says the *objects* of the United Irishmen are to overturn the present government, and to establish a republican form of government in its stead, and to comfort and abett the French, on their invading this kingdom, should such an event take place. You have heard his testimony; let me ask, do you think him incapable of being a villain?—or do you think him a villain?—You observed with what kind of pride he gave his testimony; do you believe his evidence by the solemn oath you have taken?—Or do you believe it was a blasted perjury?—Can you give credit to any man of a blasted character?—It has been the misfortune of many former jurors, to have given their verdict founded upon the evidence of a perjured witness, and on their death-bed they repented of their credulity in convicting a man upon false testimony; the history of former ages is replete with such conduct, as may be seen in the state trials, in the case of Lord Kimbolton and Titus Oates. The then jurors convicted that nobleman, but some time after his death, the jurors discovered they had given

undoubtedly is, to secure the subject from being sacrificed to fictitious conspiracies, which have been the engines of profligate and crafty politicians in all ages."—4 Com. 358.

Those laws (says Montesquieu) which condemn a man to death on the deposition of a single witness, are fatal to liberty—In right reason there should be two, because a witness who affirms, and the accused who denies, make an equal balance, and a third must incline the scale."—B. 12, c. 3—Beccaria to the same effect c. 13.

Ratio est anima legis, is a maxim of the English system of jurisprudence; were the decision of this question to be governed by that maxim, and a regard to liberty and sound policy, there are few, I am sure, who would hesitate to concur in opinion with that deep searching sage of the law, Sir Edward Coke.

The clause in the Constitution of the United States, upon this important subject of high treason, is apparently very clear and explicit—It is, however, devoutly to be wished, that an occasion for diving into its true meaning and intention had never occurred, or that it had happened in times of less devotedness to British principles and precedents—Every American would do well to peruse Judge Tucker's essay on this subject. —(See 4 Tucker's Black. Appendix B.)

given implicit credit to a witness unworthy of it; and the lawyers of those times might have said, "I thank God, *they* have done the deed."—Does not the history of human infirmity give many instances of this kind?

Gentlemen, let me bring you more immediately to the case before you; had we no evidence against Reynolds, but his own solitary evidence; from the whole of his evidence, you cannot establish the guilt of the prisoner at the bar, take the whole of his evidence into your consideration; it may appear he is unworthy of credit. He told you he got information from M'Cann on the Sunday morning, that the meeting was to be on Monday morning at 10 o'clock—Reynolds goes immediately to Mr. Cope, and gives him that information—on Sunday afternoon he goes to Lord Edward Fitzgerald, and shews him the orders issued by Captain Saurin to the Lawyers Corps: then, said Lord Edward, I fear government intends to arrest me; I will go to France, and hasten them to invade this country—government has no information of the meeting of the provincial delegates at Bond's—No (says Reynolds) that is impossible!—Reynolds wrote to Bond he could not attend the meeting, as his wife was ill; Reynolds did not go to the meeting. Bond was arrested on the Monday morning; on Monday evening at eight at night, Reynolds goes to Lord Edward in Aungier-street, met him, and goes again to him the next night, and Lord Edward conversed with Reynolds about his (Lord Edward) going to France.—Reynolds then went to Kildare; he gave the most solemn assurance to the delegates at a meeting there, that he never gave information of the meetings at Bond's—Now see how many oaths Reynolds has taken; he admits he took two of the obligations to the Society of United Irishmen. He told you Lord Edward advised him, to accept of being a Colonel of Kildare United Irishmen's army, and yet he says, he afterwards went to Bond's, and Bond advised Reynolds to be a Colonel. It appeared in evidence that Reynolds was a treasurer; he took two more oaths, one as Colonel, and one as treasurer, and he took the oath of allegiance also, and he took an oath to the truth of his testimony, at the two former trials and at this—on which do you give him credit?

Gentlemen, in order to narrow the question under your consideration, as to what Reynolds said, relative to Lord Edward's conversation, it is totally out of this case; it can have no weight at all on the trial of Mr. Bond for high treason, in the finding of your verdict.—How, or in what manner, is the prisoner at the bar to be affected by it? I submit to your Lordship that the declarations of Lord Edward to Reynolds, when Bond was not present, is not attachable to the prisoner.—Mr. Reynolds has given you a long account of a conversation he had with

Mr.

Mr. Cope, relative to the proceedings of the society of United Irishmen, and Mr. Cope said, if such a man could be found as described by Reynolds, who would come forward and give information, he would deserve the epithet of saviour of his country. Thus by Reynolds's evidence, it would seem that Mr. Cope was the little poney of repentance to drive away the the gigantic crimes of the *Colossus Reynolds*—but remember said Mr. Reynolds, though I give information I won't sacrifice my morality; I won't come forward to prosecute any United Irishman. No, no; like a bashful girl higgling about the price of her virtue, I am determined, says Reynolds, to preserve my character—I will give the communication; but do not think I will descend to be an informer—I will acquaint you with every thing against the United Irishmen, but I must preserve my credit—I tell you the design of the United Irishmen, is to overturn the Constitution—I will lead you to the threshold of discovery.—But I won't name any price for reward — Pray don't mention it at all!—Says Mr. Cope, a man would deserve a thousand or fifteen hundred a year, and a seat in Parliament, or any thing, if he could give such information—No such thing is required, no such thing, says Reynolds.—You mistake me; I will have nothing in the world, but merely a compensation for losses. Do you think I would take a bribe? I ask only of you, to give me leave *to draw a little bit of a note on you for five hundred guineas; only by way of indemnity for losses I have sustained, or am liable to sustain.*

Gentlemen of the jury, don't you see the vast distinction between a *bribe* and a *gratification*—what says Father Foigard?—"Consider my conscience; do you think, I would take a bribe?—it would grieve my conscience if I was to take a bribe!"—To be a member of Parliament, and declare for the Ayes or Noes—I will accept of no bribe—I will only take a little indemnity for claret that may be spilt, for a little furniture that may be destroyed, for a little wear and tare, for boots and shoes; for plate destroyed; for defraying the expences of some pleasurable jaunts, when out of this country; for if I became a public informer against the United Irishmen, and should continue here for some time, I may chance, at some time, to be killed by some of them, for I have sworn to be true to *them*, and I also took the oaths of allegiance to be true to my *Sovereign; I have taken all sorts of oaths*; if I frequent the company of those who are loyal to the King, they will despise the man who broke his oath of allegiance, and between the Loyalists and the United Irishmen, I may chance to be killed.

As I am in the habit of living in the world, says Mr. Reynolds to Mr. Cope, you will give me leave to draw a bit of paper on you at present, only for 300 guineas; it will operate like

a bandage to a sore leg, though it won't cure the sore, or the rottenness of the bone, it may hide it from the public view.—I will, says Mr. Reynolds, be newly baptized for a draft of 300 guineas, and become a public informer for a farther bit of paper only, for another 200 guineas; yet I trust you will excuse me, I will not positively take any more.—He might, I imagine, be compared to an artful girl, who says, what, shall the brutal arms of man attack an innocent maid, and she not stipulate for full wages, when her gown shortens, and her apron bursts asunder, and she sinks down to public prostitution; perhaps he practised upon her virtue, when he thought he was gaining the affections of an innocent woman—Do you think that Reynolds would touch a bribe, and become an informer?—No, no; he said, *he would be no informer!*—But did he not consent *to do a little business in private!*—And did he not GET MONEY FOR IT?—Perhaps, he said, I would not have the world think me a villain, yet, as I can confide in myself, why should I mind what the world says of me, though it should call me villain?—Even though I should become the talk of all the porter houses, though I should become the talk of all the tea-tables, yet perjury is not brought home to me.—No, no human being has knowledge of what is rankling within?—Has it not been said, I was an honest man, to come upon the public table as a public informer?—They did call me an honest man, a worthy a respectable informer, and thus my character is at bay. The world has heard of the progress of my crimes, and that I was a professed United Irishman.

He told you there was a provincial meeting of Delegates, but he has not ventured to tell you where the provincial committee met;—he has simply said, there was a provincial committee—It was a question of great concern; I have doubts about it.—It is not stated to me what these important consultations were about.—From M'Cann he heard that a baronial meeting was to be at Bond's on the 12th of March, and that there was material business to transact, and desired Reynolds to attend—that is all that Reynolds heard from M'Cann, and M'Cann is now no more, and this part of the case is doubt and obscurity.—For my part, I am not satisfied, that any thing criminal, did pass at the meeting at Bond's on the 12th of March—No man can say so—on the evidence produced, they do not say that they only do *suppose* there was.—Were the jury to judge of their own present view, I do not think they would come justly with their verdict of condemnation.—The question is not, whether there was any meeting at Bond's, but what was the *object* of that meeting?—Bond was in the ware-house in the custody of the guard; afterwards he came up to the room with Mr. Swan.—At Bond's there was a meeting of the United Irishmen; and

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though Bond was not taken in that room, yet Bond's charge is mixed with the guilt of that meeting.

The overt act in the indictment is for conspiring to levy war, &c. It is material, to observe in this part of the case, it was "a bare conspiracy, to levy war;" it is not, as I conceive, high treason; the bare intention does not amount to compassing or imagining the death of the King—it is not adhering to the King's enemies; under certain circumstances, this is not high treason of compassing the death of the King.—This is the great hinge, as I apprehend in this case.

Gentlemen, what was the evidence given?—that there was a meeting for a dangerous purpose.—M'Cann said, there was to be a meeting of the Delegates at Bond's on the 12th of March —he did not tell Reynolds the *purport* of that meeting; therefore, gentlemen, my objection is, was that a provincial meeting?—It rests on the evidence of the informer, and no other witness—It was M'Cann told Reynolds, you must be at the convention on the 12th of March, "to compass the death of the King, and to overturn the government"—but Bond did not tell him any such thing—Bond only said, "M'Cann was able to give information, of what was going forward at that meeting;" but Bond knew nothing about it; though admitting a meeting was held in Bond's house for a guilty purpose, yet Bond might be perfectly innocent; he was not in the room till Mr. Swan came.—There was to be a watch word, "is M'Cann here," from thence it would seem it was a meeting at M'Cann's suggestion—Mr. Bond probably did not know the motive, why he gave the use of the room; for there was not one word of conversation between Bond and Reynolds—Reynolds says, M'Cann told him the watch word—M'Cann did not get the watch word from Bond, the prisoner at the bar; the watch word was, "is M'Cann here?"—It was for the admission of no person that M'Cann did not know; it had no relation to Mr. Bond. Has this no weight with you, gentlemen of the jury?—Do you feel anxious to investigate the truth? if you believe Reynolds the meeting was for the worst purpose, but was it with the knowledge of Bond?—for Bond said to Reynolds, "I can give you no information, go to M'Cann, he can inform you"—Upon the evdience therefore of Reynolds rests this man's life, for the written evidence found in the room, cannot, in my apprehension, affect Bond, he was not in the room; if you are, as no doubt you will be of opinion, Bond was not in the room, where the papers were found.

There is not any evidence of the conversation before Mr. Swan came, and he found on the table a paper written on and the ink not dry, "I, A. B. was duly elected"—it was not found upon the prisoner at the bar—the papers found might affect the per-

persons in the room; but, at the time of the seizure of the papers, Bond was in the ware-house in custody of Sergeant Dugan, and was not brought up stairs, until after the arrest. The papers found upon Bond, might be read in evidence against him, but I conceive not those found in the room. What was the intention of mentioning the letters from Reynolds, found on the prisoner at the bar?—It was stated, but not read in evidence, merely to apologize for Reynolds not attending the meeting on the 12th of March. Reynolds says he got it again and burnt it—Reynolds did not pretend to state to you, he knew from Bond, what the object of the meeting was;—and it is material to observe, that Bond's name was not found entered in the list of the persons who made returns, and attended the meeting.

Mr. Bond has been resident in this city 20 years; in your walks of life, gentlemen of the jury, you never heard any thing to his prejudice before this charge.—I know my duty to my client, and must tell you, if you have had prejudices, I know you will discard them; I am not paying you any compliments; I have spoken under the feelings of an Irishman during the course of these trials; I have endeavoured to speak to your understandings; I have not ventured to entreat you on behalf of my client, because I am sure you will give your justice and your merits free operation in your minds and consciences at this trial. I am sure you will try the cause fairly, and admit every circumstance into your reflection. In a case between the crown and the prisoner, I have not ventured to address you on the public feelings, at this important crisis; you will preserve the subject for the sake of the Law, and preserve the law for the sake of the Crown. You are to decide by your sober and deliberate understandings, and hold the balance equal between the crown and the subject, for you are called upon to pronounce your sentence of condemnation or acquittal of the prisoner at the bar.—If you should be mistaken in your verdict, it cannot shake the safety of the State; you are called upon, with the less anxiety, because which ever way your verdict may be, you are not to be told, remember the safety of your King, or of your own safety; you are to have in recollection your solemn oath, to decide according to the evidence, and give such a verdict, as may always be satisfactory to your consciences, at the last moment of your existence.

The Court will tell you, it is your province to decide on matter of fact, and as to opinion on matter of law, the Court will explain that to you. Your verdict can never die. As to my opinions of the law, whatever they may be, I shall never have an opportunity of uttering to you again; your verdict will stamp infamy on the prisoner, or support the throne of the law; I need not remind you, that the present moment is awful. My friends

friends, if you suffer your consciences to be influenced, to be degraded, into opinions of the consequences of your verdict; you are bound to decide by the evidences, the glorious privilege of trial by jury—If Martial law must cut the thread of brotherly affection, the necessity of it will cease, for verdicts of honest jurors will restore your country to peace and tranquility, and the liberties of your country will by that means be secured, the supreme government of the nation be protected and supported, whatever the form of that government may be; let me however ask, is there no species of law to be resorted to but terror?—let me observe to you, that the moral law is destroyed, when it is stained with the effusion of blood, and it is much to be regreted, when the terrors of the criminal law are obliged to be resorted to, to enforce obedience to the common law of the land, by the people, for the sword may cover the land with millions of deluded men. Is it become necessary, to hurl destruction round the land, till it shivers into a thousand particles, to the destruction of all moral law, and all moral obligations?—By the common law of the land, no subject is to be deprived of life, but by a trial of his fellow subjects; but in times when a rebellion prevails in any country, many suffer without the semblance of a trial by his equals. From the earliest period of history down to the present time, there have been in some parts of the earth, instances where jurors have done little more than recorded the opinions given to them by the then judges, but it is the last scene of departing liberty.—I have read that in the period of the rebellion, in the last century in England, that jurors on trials, by the common law of the land, have been swayed in their determination, by the unsupported evidence of an informer, and after times have proved their verdict was ill founded, and the innocency of the convicted persons had afterwards appeared: trials on charges of high treason are of the utmost moment to the country, not merely with respect to any individual, but of the importance it is to the public, that they should know the blessings of trial by jury, and that the jurors will solely determine on their verdict, by the evidences, and *maturely weigh the credit of the witnesses against the prisoner.*

At some of these trials of late date, some of you have been present, and you know that the objects of the Court and of the jurors are to investigate the truth from the evidences produced, and the jurors are sworn to decide and to bring in a true verdict according to the evidences.—One witness has been examined on this trial, which, I think, does not deserve credit, but it is you who are the sole judges, whom you will give credit to; but though you know this witness has given evidence on two former trials, and though the then jury did give credit to his testimony, yet you are not now to determine, on the faith or pre-

precedent of any former jurors, but you are to be solely guided by your own consciences, and you will observe we have had here two more witnesses to impeach the character of Reynolds, that were not produced on the former trials, and will, no doubt, throw out of your minds, whatever did not come this day before you in the evidence. You will find your verdict flowing from conscious integrity, and the feelings of honourable minds; notwithstanding the evidence of the witness, Reynolds, who has been examined upon the table, and whose testimony I need not repeat to you, perhaps you may be inclined to think, he is a perjured witness, perhaps you will not believe the story he has told against the prisoner at the bar, and of his own turpitude; you will do well to consider, it was through a perjured witness, that a Russel and a Sidney were convicted in the reign of James II.—If juries are not circumspect, to determine only by the evidence adduced before them, and not from any extraneous matter, nor from the slightest breath of prejudice, then what will become of our boasted trial by jury; then what will become of our boasted constitution in Ireland?—When former jurors decided contrary to evidence, it created great effusion of blood in former times. Let me ask, will you, gentlemen, give a verdict through infirmity of body, or through misrepresentations, or through ignorance?—You, by your verdict, will give an answer to this.

Gentlemen of the jury, you will weigh in your minds, that many inhuman executions did take place in former times, tho' the then accused underwent the solemnity of a trial; the verdicts of those jurors are not in a state of annihilation, for they remain on the page of history, as a beacon to future jurors; the judges before whom the then accused were tried, have long since paid the debt of nature; they cannot now be called to account, why they shrunk from their duty—I call upon you, gentlemen of the jury, to be firm in the exercise of that solemn duty you are now engaged in; should you be of opinion to bring in a verdict of condemnation against my unfortunate client, for myself I ought to care nothing, what impressions may actuate your minds, to find such a verdict; it little regardeth me, but it much regardeth you, to consider what kind of men you condemn to die; and before you write their bloody sentence, consider maturely whether the charge against the prisoner is fully proved. If you should on the evidence you have heard, condemn the prisoner to death, and afterwards repent it, I shall not live among you, to trace any proof of your future repentance.

I said, I rose to tell you what evidences we had to produce on behalf of my client, the prisoner at the bar; we shall lay evidence before you, from which you can infer, that the witness pro-

produced this day was a perjured man; we have only to shew to you, as honest men, that the witness is not deserving of credit, on his oath; we have nothing more to offer, on behalf of my client, the prisoner at the bar.—It is your province to deliberate in your consciences, on what evidence you have heard, and whether you will believe the witness you have heard on his oath or not.—Let me ask, will you, upon the evidence you have heard, take away the life of a man of this kind, as the prisoner at the bar, from his wife and from his little children forever? —I told you, I was to state the evidences, which we had to bring forward, on behalf of my unfortunate client;—I tell you it is to discredit the testimony of Reynolds;—when you have heard our evidences to this point, I cannot suppose you will give your verdict, to doom to death the unhappy and unfortunate prisoner at the bar, and entail infamy on his posterity.— We will also produce respectable witnesses, to the hitherto unimpeached character of the prisoner at the bar, that he was a man of fair honest character; you, gentlemen of the jury, have yourselves known him a number of years in this city; let me ask you, do you not know, that the prisoner at the bar has always borne the character of a man of integrity, and of honest fame?—and, gentlemen of the jury, I call upon you to answer my question by your verdict—I feel myself imprest, with the idea in my breast, that you will give your verdict of acquittal of the prisoner at the bar; and that by your verdict you will declare on your oaths, that you do not believe one syllable that Reynolds has told you. Let me entreat you to put in one scale, the base, the attainted, the unfounded, the perjured witness, and in the opposite scale, let me advise you to put the testimony of the respectable witnesses produced against Reynolds, and the witnesses to the prisoner's hitherto unimpeached character, and you will hold the balance with justice, tempered with mercy, as your consciences in future will approve.

Let me depart from the scene of beholding human misery— should the life of my client, by your verdict, be forfeited, should he live by your verdict of acquittal, he would rank as the kindest father, and protector of his little children, as the best of husbands, and of friends, and ever maintain that irreproachable character, he has hitherto sustained in private life. Should our witnesses not exculpate the prisoner from the crime charged on him to the extent as charged in the indictment, I pray to God, to give you the judgment and understanding to acquit him. Do not imagine, I have made use of any arguments to mislead your consciences, or to distress your feelings —No, but if you conceive a doubt in your minds, that the prisoner is innocent of the crime of high treason, I pray to God, to give you firmness of mind to acquit him.

I now leave you, gentlemen of the jury, to the free exercise of your own judgments in the verdict you may give.—I have not by way of supplication, addressed you in argument; I do not wish to distress your feelings from supplications; it would be most unbefitting to your candour and understanding—you are bound by your oaths, to find a true verdict according to the evidence; and you do not deserve the station of jurors, the Constitution has placed you in, if you do not discharge the trust freely and according to your consciences.

EVIDENCE *on the part of the* PRISONER.

Valentine Conner swore, That he knew Thomas Reynolds, that he would not believe him on his oath; he spoke from a knowledge of his general character, and also from the transaction between Reynolds and Cope, which he did not think a fair one.

Ann Fitzgerald swore, That Reynolds, in her opinion, did not deserve credit on oath; and her reason for thinking so, was his conduct with Mrs. Cahil.

Henry Withrington said, his sister had the misfortune to be married to Reynolds, and from his general character he did not believe him worthy of credit upon his oath—He said he was sent for to his mother's house, the Saturday before her death—here it was observed by the Court, that this witness contradicted the evidence, Reynolds, about the pitched sheet.

Edward Withrington to the same effect.

Rev. Thomas Kingsbury sworn on the part of Reynolds, said, that he had known him many years, and that he deserved credit upon oath.

The case closed on both sides.

Mr. Ponsonby spoke to the evidence in behalf of the prisoner; his speech was in substance entirely similar to that of Mr. Curran.

Mr. Saurin replied on the part of the Crown—as however his remarks were to the same effect as those of the Judge in his charge to the jury, we thought it needless to insert it.

Mr. *Justice Chamberlaine*—Gentlemen of the Jury, the prisoner at the bar stands indicted for high treason.—One of the overt acts laid in the indictment is, that the prisoner at the bar with other false traitors, did enter into a conspiracy to levy war against the King, which is a compassing or imagining the death of the King, which by the statute of the 25 Edw. III. is high treason. Although the natural death of the King was not the immediate consequence, the fact of levying war against the King might bring the life of the King into danger; and therefore the statute wisely provides to prevent it, by making it high trea-

treason to compass or imagine the death of the King. Whether such compassing or imagining was entered into on this side of the water, or in England, where the King resides, makes no difference in the case, as the realm of Ireland is a part of the dominions of the King. As the levying war against the King cannot be done without endangering the life of the King, it is high treason to levy such war; and the same to overturn, by force, the government of this kingdom, is a compassing or imagining the death of the King, and constitutes the crime of high treason. The indictment fully states the several overt acts, to support the two principal counts in the indictment.

The learned Judge expounded to the jury the several overt acts stated in the indictment, and said, if the jury was fully satisfied by the evidences that have been produced, that the prisoner did become an United Irishman, for the purpose of overturning, by force, the government of this kingdom; and to carry into effect, he did assemble with others about the means of arming men for said purpose, and carrying on said rebellion—If on these or any other overt acts, laid in the indictment, you, gentlemen of the jury, by the evidences you have heard, should be of opinion that any one of the overt acts is fully proved on the prisoner, it is sufficient to warrant your finding the prisoner guilty. You need go no further, if you find him guilty of any one of the over acts laid in the indictment.

Now, gentlemen of the jury, it may be necessary to explain to you what the law is upon the subject of high treason. A great deal has been said by the learned counsel for the prisoner in this case, that, by the law of England, two witneses are in England required to prove an overt act of high treason. By the common law of England in cases of murder, if the jury shall believe the fact proved, one witness is sufficient, as in the case of Sir John Pennington. The common law of England, and the common law of Ireland, is the same, and though the Irish Legislature never thought proper to expressly state it, I beg leave to say, I am most firmlyof opinion, *that the evidence of one single witness is sufficient to prove an overt act of high treason.*

You have heard the evidence given in this case. — The evidence of Thomas Reynolds is, that Mr. Bond was a member of the society of United Irishmen—Here the learned Judge read the evidence of Reynolds, of which his Lordship had taken accurate notes; and having gone through his evidence, his Lordship proceeded to the written evidence proved on this trial, and directed Hugh Wilson's letter to be read, which being gone through, to shew the malignant designs of the society of United Irishmen, of which society, Bond, Hugh Wilson, and Lord Edward Fitzgerald, were members, his Lordship next advert-

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ed to that part of Mr. Reynolds's evidence where he says, Lord Edward Fitzgerald being a member of the society of United Irishmen, did desire Reynolds to be a Colonel, and on which Reynolds consulted Mr. Bond, who also desired Reynolds to accept the rank of Colonel. His Lordship observed, there is evidence to go to the jury that Bond, Hugh Wilson, and Lord Edward Fitzgerald, were members of the society of United Irishmen, and that they had joined in the conspiracy; there was evidence against them all—they had engaged in one common interest.

His Lordship stated, that after Reynolds had accepted the post of Colonel, he had gone down to the country, had engaged in a conversation with Mr. Cope, which terminated in Mr. Reynolds's giving information of the meeting at Bond's, on the 12th of March last, as given at full in the evidence of Reynolds, as before set forth, which evidence had been corroborated by the testimony of Mr. Cope, and had not been contradicted by any evidence whatever. His Lordship next adverted to the part of the evidence given by Reynolds, of his conversation with Lord Edward Fitzgerald after the arrest of Bond, wherein Lord Edward said, "he wished to go to France to hasten the invasion of Ireland." His Lordship said, this was evidence of a declaration made by Lord Edward of adhering to the King's enemies; and Lord Edward also said, "that Wexford would be a rallying point." His Lordship recapitulated to the jury, the testimony of Reynolds on his cross-examination, and also stated the evidence of Mrs. Fitzgerald, Valentine Conner, and the two Mr. Withringtons, to the point, that Mr. Reynolds ought not to be believed on his oath, and on this part of the case, his Lordship said, the jury are to determine on the credit they may give to the witnesses; and his Lordship added, I must say, I do not see any instance that Reynolds has been contradicted in, and as to the ground of the evidence of Mrs. Fitzgerald, &c. it does not destroy the evidence of Reynolds.

As to the money transaction between Mr. Cope and Reynolds, about the mortgage of 5000l. on the lands of Castle Jordan, Reynolds had given his personal security to Mr. Cope, and he wanted to take up that personal security on the final settlement of the mortgage. In this part his Lordship told the jury, there was nothing in that transaction by which the character of Reynolds could be impeached; for suppose a man becomes bound by deed to pay a debt, it is a moral obligation, and suppose he did not pay the debt, yet such a circumstance is not a ground to say, that such a man's oath ought not to be believed in a Court of justice, it will not destroy his credit. If a man has taken the abominable, unlawful oath of the Society of United Irishmen, it would not destroy his credit, in giving testimony in a Court

Court of justice, for he hath sworn in this Court, "that he would tell the whole truth, and nothing but the truth."

His Lordship having illustrated with great ability and legal precision, the law of evidence, proceeded to sum up to the gentlemen of the jury, the testimony given by Mr. Swan, relative to his arresting the prisoner at the bar on the 12th of March last, and of the arrest of the persons in the room in Bond's house, and of the watch word as declared previous by Reynolds would be made use of; this evidence of Swan's was corroborative of Reynolds's evidence, as to the truth of the information before given to Mr. Cope; and Mr. Swan gave in evidence the papers he had found in the room, and the papers found on the person of Bond, at the time of his arrest. His Lordship observed those pieces of written evidence were unquestionably admissable, and conclusive evidence to go to the jury on a question of matter of fact; and his Lordship remarked, that those written documents proved on the trial, did bring home to Mr. Bond, the prisoner at the bar, the charges against him in the indictment, for Bond appeared to be embarked in the same bottom with the persons assembled in the room in Bond's house, and on whom, and in which room, the papers now produced were found; and in support of the doctrine his Lordship laid down, he quoted the case of Weldon, that papers found in possession of a meeting of conspirators, would be evidence against all or each of them, and in a case of treason it is strong evidence to go to the jury. The papers were found in the room where fourteen men, members of the Society of United Irishmen, met on the 12th March, and who had held a previous meeting in the same house, on the 19th of February preceding. It appears by the evidence of Serjeant Dugan, that he was by Bond admitted to pass in, on giving the watch word, "where is M'Cann?"—this shews that Bond was acquainted with their watch word.

You, gentlemen of the jury, are to judge by the conduct of Bond, whether he was not connected with the society of United Irishmen, who met in his house on the 12th of March. There was found on the prisoner at the bar, a paper purporting to be an address to the society of United Irishmen; it was read in evidence, and will be material for your consideration; you will determine whether you believe Bond was a member of the society of United Irishmen, and was in the habit of acting with them in their conspiracies, and this you will judge of from the evidence *parole* and *written* which has been produced before you in the course of this trial. If you believe the evidence of Reynolds, he told you that Bond was a United Irishman in February 1797, and afterwards told Reynolds he wished him to be a Colonel, *i.e.* Colonel of the army for the county of Kildare, under

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the society of United Irishmen—and by written evidence it appears, the intent of that society was to overturn the Constitution of this kingdom by force.

Gentlemen of the Jury, upon the whole of this case, you will judge of the verdict you may give, by the evidences which have been adduced before you—you will judge of it, as men of sense, you are to determine on your consciences, whether you do believe that Oliver Bond the prisoner at the bar, was a member of the society of United Irishmen, or not. You will determine on this question, by comparing all these papers that have been produced in evidence; and by the testimony of Reynolds. in one of these papers it says, County of Wicklow returned 12,095 Queen's County 11,689, Carlow 9,914, Meath 14,000, Kildare 10,863, and the County of Kilkenny 604 — Amount of money received 40*l.* 18*s.* 3*d.*—At the foot of this paper, produced in evidence, was written dated about the 19th of February 1798, Resolved, that we will pay no attention to any measure which the parliament of this kingdom may adopt to divert the public mind from the grand object we have in view, as nothing less than a complete emancipation of our country can satisfy us. Resolved, that it is the opinion of this Committee, that if the other provinces be in the same state of forwardness, as to men, arms, &c. as Leinster, as soon as we can obtain information thereof, we will immediately proceed to act, and that the *Executive* be requested to take such measures, as shall bring about a union of the provinces.

Another resolution was, that a committee of five do propose a military test to be laid before the provincials at their next meeting.

Another resolution was, to recommend the appointment of an Adjutant General, from three officers of each regiment, whose names should be sent in to the *Executive Directory* by their respective Colonels, and the proper officer for that appointment, to be from thence selected by the Directory.

There was also another resolution entered into, viz. Resolved, that the sum of 16 guineas be allowed for the purchase of a horse for a Delegate to be sent with orders from the *Executive*, and when there should be no further use for him, to be sold, and the value deposited in the treasury.

Another resolution went to request the *Executive* to account for the sum of sixty guineas with which they were chargeable.

In a paper found in the room where the Delegates met in Mr. Bond's was written thus, a military test—" I A. B. do solemnly swear, that I will perform my duty, and obey all lawful commands of my officers, while they act in due subordination to the lawful committee."

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Gentlemen of the jury, you have heard these papers read in evidence, and you have heard the evidences on the part of the prosecution; and the evidences adduced to induce you to believe, that Mr. Reynolds the witness, is not worthy of credit. Mr. Valentine Conner did on his oath declare, he knew the witness Mr. Reynolds, and from his general character, says, that Mr. Reynolds does not deserve to be believed on his oath. I think, said his Lordship, that Mr. Conner's testimony ought not to have weight with you to destroy the credit of Mr. Reynolds. Mrs. Fitzgerald said, she was the sister of Mr. Fitzgerald now in custody; she told you that Reynolds did not deserve credit upon his oath—if you believe that her brother is the Mr. Fitzgerald now in custody, on a similar charge, and as you are sensible men and knowing the world, may not the sister of a person accused be brought to declare the very opposite to what she really believes about a witness, who is brought forward on the part of the prosecution?—It may be, that because Reynolds came forward to discover of these conspiracies, it was her motive for saying all she did, to imprach the credit of Reynolds. As to the witness Henry Withrington, he is a young man about 16 years old; he and his brother have given you evidence, that it was said Mrs. Withrington had been poisoned, but no proof of that was adduced; they also said, that Tartar Emetic had been administered by Mr. Reynolds, and by his orders the remains of Mrs. Withrington were wrapped up in a pitched sheet. You will judge whether these men deserve credit or not—Mr. Cope has told you, that he has known Mr. Reynolds many years, and says, he is a person worthy of credit upon his oath.

This is the whole of the evidence; if you gentlemen of the jury, have any reasonable doubt upon your minds, you must acquit the prisoner; you will determine according to the evidence in the verdict you on your consciences may decide—The whole is left to your judgment.

The Jury withdrew from the box to their room about 8 o'clock on the morning of the 24th of July, and returned in about 10 minutes with a verdict of GUILTY.

Mr. Bond being asked, what he had to say why judgment of death should not be awarded, he tendered a paper purporting to be the dying declaration of M'Cann (who was lately executed), that he was innocent—The Court rejected the paper, as being contrary to known practice.

Mr. Justice Day then pronounced the usual sentence of death against him in cases of high treason, and the prisoner was conducted back to gaol.

Oliver

*** OLIVERBOND was the ſon of a Diſſenting Miniſter in the North of Ireland, and connected by blood not only with many of the middle claſſes of the people, but alſo with ſome of thoſe who figure in the firſt ſtile of rank and faſhion. His value, however, did not ariſe from reſpectable relationſhips, but from his own perſonal merits — his public and private worth as a member of ſociety, as a merchant, a friend, a huſband, and a parent; candid, generous, and charitable—no other individual in Dublin ſtood higher in the eſtimation of his fellow-citizens of every deſcription and profeſſion.

Such, in a few words, was the man who unfortunately became an U. Iriſhman—But Mr. Bond did not ſuffer by the hands of the common executioner; ſo highly were the public intereſted in his favour, that even thoſe who were adverſe to his political opinions, joined in the moſt earneſt ſolicitations to Government, to change or mitigate the ſentence of death—ſo powerful and ſo general were the interceſſions in his favour, that Government did heſitate. Conferences were held, and negociations entered into between the Caſtle agents and the leaders of the United Iriſhmen; the firſt were to put a ſtop to the cruel proceedings of the Courts Martial, the executions, the burnings, the whippings, &c. that then covered the land—the latter, to ceaſe all further efforts on their ſide, and either to receive pardons, or to baniſh themſelves from the country.*

During theſe negociations, Mr. Bond was reſpited from time to time, when, on the morning of the 6th of September, he was found dead in his chamber. — In times of ſuſpicion and diſtruſt, the ſudden death of a man who was ſo univerſally beloved on one ſide, and ſo much feared on the other, it is not wonderful that it ſhould be aſcribed to "foul play"—that a wretch could be found in a Dublin gaol capable of murder, we readily believe; but, badly as we think of a certain claſs of European politicians, we cannot believe, that any member either of the Engliſh or Iriſh government would deſcend to ſo vile an inſtigation.

We are confirmed in this opinion, by what is related by Mr. S. Neilſon, a State priſoner at the ſame time, a man not inclined to conceal any evil trait of his perſecutors, and who wrote his account in a country where it is not become high treaſon to ſpeak the truth—He ſays, "On a ſudden, I met with one of the greateſt calamities that can befall a man—In a moment, without the ſlighteſt previous illneſs, Bond, my intimate and much beloved friend, whoſe fate had been deeply interwoven in all theſe tranſactions, fell down and expired!—This fatal cataſtrophe happened on the morning of the 6th of September—I was overwhelmed with the moſt profound grief—It was not a common acquaintance; it was not a patriot of a few months ſtanding, whoſe loſs I had to deplore—No; it was a man with whom the cloſeſt intimacy for ſeventeen years had grown into a friendſhip inexpreſſible — It was a Patriot, whoſe devotion to Liberty was coeval with his manhood; whoſe underſtanding was found as his integrity was inflexible, and whoſe early, uſeful, and active labours in the cauſe, will be recounted with exultation by his children, and remembered with gratitude by his country."——

* By one of theſe negociations, a number of the priſoners had made an agreement with Government, to tranſport themſelves to the United States — when they were informed by Mr. Marſden, (one of the Under Secretaries) "that the American Ambaſſador at the Court of St. James, had objected to their going to that country." — By this very unexpected interference, theſe gentlemen were prevented from making America the place of their aſylum, and of bringing with them property to a very large amount.

THE

TRIAL

OF

James N. Tandy and Harvey Morris

ON AN

ACT of ATTAINDER.

KING's BENCH.

BY virtue of a Certiorari directed to the Clerk of Parliament, the tenor of a certain statute to attaint James N. Tandy, Harvey Morris, and others, of high treason, having been returned into Chancery, was from thence transmitted into this Court by mittimus.—The prisoners, Tandy and Morris, on the 10th February 1800, were brought into Court, when, after having the act of Parliament read to them, they were called upon to say, why execution should not be awarded and done upon them according to the statute, of which the following is the

PENAL CLAUSE.

" Whereas the following persons have been notoriously engaged in the said rebellion, either by taking up arms or levying war against his Majesty, or by having corresponded with, or adhered with, his enemies; or by otherwise fomenting or promoting the same, or acting therein, and being conscious of their guilt have fled from justice; that is to say (here follow several names) James N. Tandy and Harvey Morris. Be it therefore enacted, that the said several persons, and each of them, shall stand attainted of high treason, and shall be liable to all the pains and penalties of law annexed to the crime of high treason, unless they, and each of them, shall severally, and respectively, surrender themselves to one of the judges of his Majesty's Court of King's Bench; or to some justice of the peace within this kingdom, before the first day of December, 1798, and shall respectively abide such charges as shall be

be made against them respectively, for, and on account of the several treasons aforesaid, with which they have been charged."—

Further proceedings were then postponed for two days, to give the prisoners' Counsel time to consider of the proper defence to be made. On the 12th of February, the Court refusing to grant any further delay, the following Plea and Replication were filed on the part of Tandy, the prisoners having severed in their pleadings :—

THE PLEA.

" And the said James N. Tandy says, that before the first day of December, 1798, to wit, on the 24th day of November, 1798, in parts beyond the sea, to wit, at Hamburg, he was arrested and imprisoned, by the command, desire, and authority of his Majesty our said Lord the King; and has been ever since continually detained in prison, by the same command, desire, or authority, by reason of which arrest and continual detention, it became impossible for him, the said James N. Tandy, from the time of said arrest, to surrender himself on or before the first day of December, 1798; and continued so impossible until after the first day of December, 1798; and this he is ready to verify, and soforth."—

REPLICATION.

" And the said Right Hon. John Toler, Attorney General of our said Sovereign Lord the King, who for our present said Sovereign Lord the King in this behalf prosecuteth, as to the said plea of him the said James N. Tandy, by him above pleaded as aforesaid, for our said present Sovereign Lord the King, saith, that the said James N. Tandy did not surrender himself within the time in the said act of parliament mentioned, to wit, on or before the first day of December, 1798, without such cause as in the plea of the said James N. Tandy is by him alledged; and this he prays may be enquired by the country; and the said James N. Tandy likewise, and soforth."

The case was then continued on affidavit being made of the absence of a material witness, until

MONDAY, 19*th May*.

This day the prisoners being brought into Court, and a jury impannelled and sworn to try the issue joined between J. N. Tandy and Mr. Attorney General,

Mr. *Ridgeway*, Counsel for the prisoner—My Lords, and Gentlemen of the Jury, in this case of the King against James Napper Tandy, by an act of parliament passed in this kingdom in the 38th year of the King, it is enacted, that James Napper Tandy, among several others, shall stand attainted of high trea-

son

son, and shall be liable to all the pains and penalties of law annexed to the crime of high treason, unless they and each of them, shall severally and respectively, surrender themselves to some one of the judges of his Majesty's Court of King'sBench, or to some justice of the peace within this kingdom, on or before the first day of December, 1798; and shall respectively abide such charges as shall be made against them respectively, for, and on account of the several treasons aforesaid, with which they have been charged.

To this Mr. Tandy has put in a plea in bar, in which he states, that before the 1st day of December, 1798, the day limited by the act of attainder for time to surrender himself, to wit, on the 24th of November, 1798, in parts beyond the sea, to wit, at Hamburgh, he was arrested and imprisoned, by the command, desire, and authority, of the King; and has ever since been detained in prison. By reason of which arrest and continual detention, it became impossible for him, from the time of the said arrest, to surrender himself on or before the said 1st day of December, 1798, and continued so impossible until after the said 1st day of December.

To this plea of Mr. Tandy, the Attorney General has replied, that he did not surrender himself within the time in the act of parliament mentioned; to wit, on or before the first of December, 1798, without such cause as in his plea alledged. And my Lords, and Gentlemen of the Jury, on this plea and replication issue has been joined.

Mr. CURRAN.——My Lords, and you gentlemen of the jury, I am in this case of Counsel for Mr. Tandy the prisoner at the bar. I could have wished it had been the pleasure of the gentleman who conducts this business on the part of the Crown, if he had gone on first: the subject itself is of a very novel nature in this country, but certainly it is the right of the Crown, and which the gentlemen have thought proper to follow to call on the Counsel for the prisoner to go first; and therefore it is my duty, my Lords, to submit to you, and to explain, under the direction of the Court, to you, gentlemen of the jury, what the nature of the question is that you are sworn to try.

An Act of Parliament was passed in this country, which began to be a law on the 6th of October, 1798; on that day it received the royal assent. By that law it is stated, that the prisoner at the bar had been guilty of acts of treason of many different kinds; and it enacted, that he should stand attainted of high treason, except he should, on or before the first day of December following, surrender himself to one of the judges of this Court, or to one of his Majesty's justices of the peace, for the puspose of becoming amenable to that law, from which

he

he was supposed to have fled, in order to abide his trial for any crime that might be alledged against him.

It was a law not passed for the purpose of absolutely pronouncing any judgment whatsoever against him, but for the purpose of compelling him to come in and take his trial; and nothing can shew more strongly that that Act of Parliament has not established any thing touching the fact of the prisoner's guilt, because it would be absurd, in one and the same breath, to pronounce that he was guilty of high treason, and then call upon him to come in and abide his trial; and the title of the act speaks that it is an act not pronouncing sentence against the prisoner, but that it is an act in order to compel him to come forward.

This act creates a parliamentary attainder not founded on the establishment of the prisoner's guilt of treason, but on his contumacious avoidance of trial, by standing out against a trial by law. I make this observation to you, gentlemen of the jury, in order that you may in the first instance, discharge from your minds any actual belief of any criminality in the prisoner at the bar, and that for two reasons; first, because a well-founded conviction of his guilt, on the authority of this statute, might have some impression on the minds of men sitting in judgment on the prisoner; but for a more material reason I wish to put it from your minds, because his guilt or innocence has nothing to do with the issue you are sworn to try.

Gentlemen, the issue you are called upon to try, is not the guilt or the innocence of the prisoner: it is therefore necessary you should understand exactly what it is. The prisoner was called on to shew cause why he should not suffer death, pursuant to the enacting clause of the statute; and he has put in a plea, in which he states, that before the time for surrender had expired, namely, on the 24th of November 1798, seven days before the day that he had for surrendering had expired, he was by the order of his Majesty arrested, and made a prisoner in the town of Hamburgh; and that in consequence of such arrest, it became impossible for him to surrender himself and become amenable to justice within the time prescribed: and the counsel for the Crown have rested the case on the denial in point of fact of this allegation; and therefore, the question that you are to try is simplified to this—"I was arrested," says the prisoner, "whereby it became impossible for me to surrender"—to which the counsel for the Crown reply, "You have not been arrested at the time alledged by you, whereby it became impossible for you to surrender." This I conceive to be the issue in point of fact joined between the parties, and on which it is my duty to explain the evidence that will be offered.

Mr.

Mr. Tandy, gentlemen, is a subject of this country, and had never been in it from the time this act of parliament passed, until he was brought into it after his arrest on the 24th of November 1798: on that day he was in the town of Hamburgh. He had seven days, in which time it was practicable for him to arrive in this country, and surrender himself, according to the requisitions of the act of attainder. Every thing that could be of value to man was at stake, and called on him to make that surrender. If he did not surrender, his life was forfeited—if he did not surrender, his fortune was confiscated—if he did not surrender, the blood of his family was corrupted; and he could leave them no inheritance, but the disgrace of having suffered as a traitor.

Your common sense, gentlemen, will shew you, that where a man is to forfeit his life unless he complies with the conditions of an act of parliament—your common sense, your common humanity must shew you, that a man ought to be suffered to perform the conditions on which his life depends. It can require no argument to impress upon your mind, that to call on a man to surrender himself on pain of death, and by force to prevent him from surrendering, goes to an attrocity of oppression that no human mind can contemplate without horror.

But it seems that the prisoner at the bar was a man of too much consequence to the repose of all the civilized nations; to the great moral system; I might almost say, to the great physical system of the universe, to be permitted to act in compliance with the statute that called upon him to surrender himself upon pain of death. The wisdom of the entire Continent was called upon to exercise its meditation on this most momentous circumstance—The diplomatic wisdom of Germany was all put into action on the subject—The enlightened humanity of the North was called on to lend its aid. Gentlemen, you know as well as I, the princely virtues, and the imperial gratifications, the consumate wisdom and sagacity, of our "stedfast friend and ally," the Emperor of all the Russians; you must feel the awe with which he ought to be mentioned: his sacred person has become embodied in the criminal law of England, and it has become almost a misprision to deem or speak of him but with reverence!—I feel that reverence for him; and I deem of him and conceive him to be a constellation of all virtue—compared with the radiance of which, the Ursa-major twinkles only as the glow-worm. And, gentlemen, what was the result of the exercise of this combination of wisdom?—That James Napper Tandy ought not to be got rid of in the ordinary way. They felt an honest and proper indignation, that a little community like Hamburgh should embezzle that carcase which was the property of "a mild and merciful government!"—they felt a proper in-

indignation that the Senate of Hamburgh, under the present sublime system, should defraud the *mercy* of the government of the blood of the prisoner, or cheat the gibbet of his bones, or defraud the *good* and *loyal* ravens of this country of his flesh—and accordingly, by an order issued to these miserable inhabitants of the town of Hamburgh, who were made to feel that common honesty and common humanity can only be sustained by a strength not to be resisted, they were obliged to break the ties of justice and hospitality, to trample on the privileges that every stranger claims; and they were obliged to suffer the prisoner to be trampled on, and meanly, and cruelly, and pitiably, to give up this unfortunate man to the disposal of those that could demand him at such a price!

If a surrender in fact had been necessary to the prisoner, certainly a very material object was atchieved by arresting him, because they thereby made it impossible for him to avail himself of the opportunity. They made it impossible for him to avail himself of the surrender, if the reflection of his mind led him to it. If a sense of the duty he owed his family, led him to a wish, or to an intention, of availing himself of the remaining time he had to surrender, they were determined he should not take advantage of it. He had been guilty of what the law deems a crime, that is, to fly from justice, though it does not go to the extent of working a corruption of blood; but by this act of power, by this act of tyrannic force, he was prevented from doing that act which every court of justice must believe he was willing to do, which the law intends he would have done—which the law gave him time to do—which the law supposes he might have done, the last hour as well as the first—He was on his passage to this country; that would not have taken up a third part of the time that had now elapsed—but by seizing on him in the manner he was arrested, it became impossible for him to surrender himself, or become amenable to justice. But, gentlemen, the prisoner, when he was arrested, was treated in a manner that made it impossible for him to do any act that might have been considered as tantamount to a surrender. He was confined in a dungeon, little larger than a grave—he was loaded with irons—he was chained by an iron that communicated from his arm to his leg, and that so short as to grind into his flesh!—In such a state of restriction did he remain for 15 days; in such a situation did he lye in a common vault; food was cut into shapeless lumps, and flung to him by his filthy attendants as he lay on the ground, as if he had been a beast: he had no bed to lie on: not even straw to coil himself up in if he could have slept. In that situation he remained in a foreign country for 15 days of his long imprisonment; and he is now called to shew good cause why he should not suffer death, because

cause he did not surrender himself and become amenable to the law!—He was debarred all communication whatsoever: if he attempted to speak to the centinels that guarded him, they could not understand him: he did make such kind of indications of his misery and his sufferings, as could be conveyed by signs; but he made them in vain. And he is now called upon to shew cause wherefore he did contumaciously and traitorously refuse to surrender himself, and become amenable to the law!

Gentlemen of the jury, I am stating facts that happened in a foreign country; will you expect that I should produce witnesses to lay those abominable offences before you in evidence? It was not in the power of the prisoner at the bar to procure witnesses; he was not of importance enough to call on the armed civilization of Europe, or on the armed barbarity of Europe, to compel the inhabitants of the town where he was imprisoned to attend in this Court, to give evidence for the preservation of his life: but though such interposal could not be obtained to preserve his life, it could be procured for the purposes of blood. And it is one reason why the rights of neutral States should be respected; because, if an individual, claiming those privileges, be torn from that sanctuary, he comes without the benefit of the testimony of those that could save his life. It is a maxim of law, that no man shall lose any thing, much less his life, by the non-performance of a condition, if that non-performance had arisen by the act of God, or of the party who is to avail himself of the condition; that the impossibility so imposed, shall be an excuse for the non-performance of the condition. That is the defence the prisoner relies upon. "Why did you not surrender and become amenable to justice?"—Because I was in chains"—"Why did you not come over to Ireland?"—"Because I was a prisoner in a grave in the town of Hamburgh."—"Why did you not do something tantamount to a surrender?"—"Because I was unpracticed in the language of the strangers, who could not be my protectors, because they were also my fellow sufferers." But he may push this reasoning much farther: the statute was made for the express purpose of making him amenable. When the Crown seized him at Hamburgh, it thereby made him amenable, and so satisfied the law. It could not seize him for execution, as an attainted person, for the time had not arrived at which the attainder could attach. The King, therefore, seized him, as a man liable to be tried; and yet he calls upon him to suffer death, because he did not make himself amenable by voluntary surrender, that is, because he did not do that which the King was pleased to do for him, by a seizure which made it at once unnecessary and impossible for him to do by any voluntary act.

Such

Such is the barbarity and folly that must ever arise, when force and power assume the functions of reason and justice. As to his intention after the arrest, it is clearly out of the question. The idea of intention is not applicable to an impossible act. To give existence to intention, the act must be possible, and the agent must be free. Gentlemen, this, and this only, is the subject on which you are to give a verdict. I do think it highly honourable to the Gentleman who has came over to this country, to give the prisoner at the bar the benefit of his evidence; no process could have compelled him: the inhabitants of foreign countries are beyond the reach of process to bring witnesses to give evidence. But we have a witness, and that of the highest respectability who was himself at Hamburgh, at the time Mr. Tandy was arrested, in an official situation. We will call Sir James Crawford, who was then the King's representative in the town of Hamburgh. We will shew you by his evidence, the facts that I have stated; that before the time allowed to the prisoner to surrender had elapsed, Sir Jas. Crawford did, in his official situation, and by orders from his own government cause the person of Mr. Tandy to be arrested in Hamburgh.—Far am I from suspecting or insinuating on Sir James Crawford, that any of the cruelties that were practised on that abused and helpless community, or on my abused client, were committed at his instance or personal sanction—certain am I that no such fact could be possible.

I told you before, gentlemen, that the principal question you had to try was, the fact on which the parties had joined issue; the force and arrest alledged by the prisoner, and the denial of that force by the counsel for the Crown. There is one consideration that I think necessary to give some attention to. What you may think of the probable guilt or innocence of the prisoner, is not within the question that you are to decide; but if you should have any opinion of that sort, the verdict given in favour of the prisoner can be no preclusion to public justice, if after your verdict they still call for his life: the utmost that can follow from a verdict in his favour, will be, that he will be considered as a person who has surrendered to justice, and must abide his trial for any crime that may be charged against him. There are various ways of getting rid of him; if it is necessary to the repose of the world that he should die. I have said, if he has committed any crime, he is amenable to justice; and in the hands of the law: he may be proceeded against before a jury; or, he may be proceeded against in another and more summary manner: it may so happen, that you may not be called upon to dispose of his life or of his character finally. Whatever verdict a jury can pronounce upon him, will be of no final avail. There was indeed a time, when a jury was the shield of li-

liberty and life.—There was a time, when I never rose to address it, without a certain sentiment of confidence and pride—but that time is past.

I have no heart now to make any appeal to your indignation, your justice, or your humanity. I sink under the consciousness that you are nothing. With us, the trial by jury has given place to shorter, and no doubt, better modes of disposing of life. Even in the sister nation, a verdict can merely prevent the duty of the hangman, but it never can purge the stain which the first malignity of accusation, however falsified by proof, stamps indelibly on the character of an "acquitted felon." *—To speak proudly of it to you, would be a cruel mockery of your condition; but let me be at least a supplicant with you for its memory. Do not, I beseech you, by a vile instrumentality, cast any disgrace upon its memory. I know you are called out to day, to fill up the ceremonial of a gaudy pageant, and that to-morrow you will be flung back again among the unused and useless lumber of the Constitution; but trust me, the good old trial by jury will come round again; trust me, gentlemen, in the revolution of the great wheel of human affairs, though it is now at the bottom, it will re-ascend to the station it has lost, and once more assume its former dignity and respect; trust me, that mankind will become tired of resisting the spirit of innovation, by subverting every ancient and established principle, and by trampling upon every right of individuals, and of nations. Man, destined to the grave—nothing that appertains to him is exempt from the stroke of death—his life fleeth as a dream, his liberty passeth as a shadow. So too of his slavery—it is not immortal; the chain that grinds him is gnawed by rust, or it is rent by fury, or by accident, and the wretch is astonished at the intrusions of Freedom, unannounced even by the harbinger of Hope.

Let me, therefore, conjure you, by the memory of the past, and the hope of the future, to respect the fallen condition of the good old trial by jury—and cast no infamy upon it. If it is necessary to the repose of the world that the prisoner should die, there are many ways of killing him—we know there are; it is not necessary that *you* should be stained with his blood. The strange and still more unheard of proceedings against the prisoner at the bar, has made the business of this day a subject of more attention to all Europe, than is generally excited by the fate or the suffering of any individual. Let me, therefore advise you, seriously to reflect upon your situation, before you give a verdict of meanness and blood that must stamp the character of folly and barbarity upon this already disgraced and degraded country. Evi-

* Mr. Windham's phraseology—him who lately said in the British Parliament, "that *Peter Porcupine* deserved a statue of gold for his conduct in America!!!"

EVIDENCE *on the part of the* PRISONER.

Sir James Crawford deposed, That he was the King's Minister Plenipotentiary at Hamburgh in 1798; that in consequence of orders transmitted to him from his Majesty's Secretary of State, he made a requisition of the Senate of Hamburgh to have James N. Tandy arrested and confined, which was accordingly done on the 24th November 1798, and he was continued in close custody until after the 1st of December following—that he believes Tandy was in Hamburgh on his way to Paris—that the Senate of Hamburgh, as this deponent understood, at the instance of Tandy, made application to this deponent to release him on the ground of his being a commissioned officer in the army of the French Republic—No application was made to this deponent to send Tandy either to England or Ireland, and if there had, this deponent would have endeavoured to transmit him to England as soon as possible, which however he could not have done without the consent of the Senate of Hamburgh, as they for some time refused to give Tandy up, lest they should embroil themselves with the French Republic, under which they were informed he held a military commission *—This deponent supposes it possible with fair winds, to come from Hamburgh to Yarmouth in England in 37 hours.

G. Smith swore, That he was sent on behalf of the prisoners to Hamburgh, with a subpœna, for Sir James Crawford, Mathias Myer, and Ferdinand W. Wallbourn; and by authority of the prisoners, offered to defray their expences to any amount they might fix on; they did not all obey the summons, the two latter are not here.

Mr. *Attorney General* then addressed the Court and Jury—He spoke at great length, and dwelt much upon the case of Lord Duffus as being strongly in point; after him Mr. Prime Sergeant made some few observations.

Mr. *Ponsonby* in reply observed, it would have been just as pertinent to the point to have quoted the case of the six carpenters, or the case from Swift of Stradley versus Styles, as that of Lord Duffus—He then commented upon the testimony and the law applicable thereto, and said, that had the two witnesses of Hamburgh attended, Mr. Curran's statement as to the manner in which the prisoner had been treated, would have been fully proven.

Mr. *M'Nally* spoke to the same effect.

Mr. *Ridgeway* was stopped by the Court——

Lord *Kilwarden*. — Gentlemen of the jury, you have a plain and simple issue, on a question of fact, to decide; and on as simple and plain evidence, as ever was laid before a Court and jury.—The question you have to try is, whether James N. Tandy

* They were involved with the French *Republic*—Bonaparte not only wrote them a long and angry letter, but obliged them to pay a sum of money by way of *quietus*.

dy, the prisoner at the bar, was arrested on the 24th day of November, 1798, by authority derived from the King; and that by reason of that arrest and continual detainer under that arrest, from the day of the arrest to the first day of December in the same year, 1798, it became impossible for the said James N. Tandy to surrender himself, on or before the first day of Decemher, 1798.

Before I state the evidence, I will trouble you by stating the occasion of the present enquiry. An Act of Parliament passed in this country on the 5th day of October, 1798, entitled, "An Act to compel certain persons who have been engaged in the late rebellion, which hath broken out in this kingdom, to surrender themselves and abide their trials, respectively, within a limited time, on pain of being attainted of high treason." And then the act goes on, and recites the names of certain persons charged with being concerned in acts of treason, and among the rest, the prisoner, and that he had fled; and then the act proceeds to adopt such measures as may bring them in and render them to justice; then it goes on and says, that each of them "shall stand attainted of high treason, and shall be liable to all the pains and penalties by law annexed to the crime of high treason, unless they and each of them shall severally and respectively surrender themselves to some one of the judges of his Majesty's Court of King's Bench, or to some justice of the peace within this kingdom, on or before the first day of December 1798, and shall respectively abide such charges as shall be made against them respectively, for and on account of the several treasons aforesaid, with which they have been charged."

The parties mentioned in this act, had until the last moment of the day of the first of December, 1798, to surrender themselves; and, gentlemen, you will observe, that the object of this act was not to attaint or punish any man; but it was to compel every man, mentioned in it, to do that which every subject of the realm was bound to do, namely, to surrender himself to justice; and the act does expressly say, that he must surrender himself, and take his trial for any charges that shall be brought against him. The end and purport of the act was not to inflict punishment on the party, or to condemn him to death unheard; but it was to compel him to do that which he ought to do, namely, to surrender himself; and in case he did not surrender himself, the act then went further, and enacted, that the fact with which he was charged, should be taken as confessed, and that he had acknowledged the crime. I have stated so much to you, to remove from your mind what cannot indeed enter into it—that you have no more to do with the criminality of Mr. Tandy, than you have with the criminality of any other person alive; and it is your duty to suffer no such idea to

enter

enter into your minds. It is necessary for me to go further: I will state this to you—that by finding a verdict in favour of the prisoner at the bar, it will produce no other effect, than giving the Crown an opportunity of indicting him for such charges as they may have against him; and in my apprehension, the intention or criminality of the prisoner is out of the question.

I wish you to bear in your mind what the issue to be tried is; it is what I have stated—Whether Mr. Tandy was arrested on the twenty-fourth day of November, 1798, and kept in close custody; and *quoad*, whether it was thereby rendered impossible for him to surrender himself? As to his will or intention, it is not given to you in evidence, nor are you bound to enquire into it; and if you suffer that to enter into your consideration, you will find a verdict (if you find against the prisoner) on a fact that had no right to go to you in evidence. It is not what his intention was, or might have been, on the 23d of November, 1798, to go to Paris, and on the 24th to come to Ireland; that is beyond your enquiry, and if you enter into a consideration on that subject, you do that which you were not sworn to try. But you are sworn to try if he was, from that day until the time limited had elapsed, continually confined; and if it was thereby rendered impossible for him to surrender himself "to one of the judges of the Court of King's Bench, or to some justice of the peace within this kingdom."

It remains now but to consider the evidence—There was but one witness produced, and that was the British Minister resident at Hamburgh at the time of Mr. Tandy's arrest. And what does Sir James Crawford say?—From his evidence you will enquire, if it was possible for Mr. Tandy to come over to Ireland to surrender himself? Sir James Crawford informed you, that he received instruction from Lord Grenville, his Majesty's secretary of state, to have Mr. Tandy arrested; that he accordingly was arrested, and confined in the gaol of Hamburgh. —You will be particularly attentive to Sir James Crawford's expressions. He said the prisoner was under close confinement, and had been continually watched by foreign officers, from the time of his arrest, until he was transmitted to England.—That is the direct and positive evidence of Sir James Crawford. Mr. Tandy was arrested by his order—detained by his order—under the authority of a foreign state—by officers of a foreign state. The possibility of Sir James having discharged him from the arrest does not appear, nor is there any evidence to shew that possibility.

Some questions were asked Sir James, as to what he heard and believed.—His answers to those questions, in the opinion of the Court, are not evidence to bear on the present case. Sir James Crawford said, that he did hear a requisition had been made

made, and he believed the prisoner had been claimed as a French officer; but he heard it from some person, not from the prisoner—he never had any conversation with him—he never saw him until the day he was transmitted—That is not evidence to affect Mr Tandy. You are told that this gentleman might have come over into Ireland, because he might have made application to Sir James Crawford. In my mind that is a very gross supposition: but if he had an opportunity of making that application, Sir James did not know if the Senate of Hamburgh would have consented.—Sir James Crawford went farther—he never had any conversation with the prisoner—he did not know if the prisoner was acquainted with the circumstance of having been arrested by his orders as the British Minister. The fact does not appear, that the prisoner knew by what authority he was arrested; and without that knowledge, how could he know where to make an application?—How is it possible to conceive, from the evidence given, that he had an opportunity to make any application?—For my part, I cannot conceive it I have the direction of my brethren on the bench, to say for them what I have already said for myself; that it is a case particularly clear, and on which there can be no doubt, that there was an impossibility from the time of the prisoner's arrest on the 24th day of November, 1798, until the last moment of the 1st day of December following, to surrender himself according to the requisitions of the statute.

The jury retired for a few minutes, and then returned their verdict, "we find for the prisoner."

Mr. *Attorney General* then stated, that as the same evidence was applicable to the prisoner, Harvey Morris, he would withdraw the Replication, and confess the Plea; which being done, he prayed that the prisoners might be remanded for the present.

The prisoners were accordingly remanded.

A bill of indictment for high treason being soon after found against Mr. Tandy at Lifford in the county of Donegal, he was accordingly transmitted to that place to be tried by the Circuit Judges.

LIFFORD, *April* 7.

THE KING v. TANDY.

At 10 o'clock Mr. JusticeChamberlaine and Mr. Justice Fox took their seats on the Bench, and the prisoner being brought up, was asked by the Clerk of the Crown, Whether he was ready for his trial?

Mr. *Rolleston* then rose and moved the Court, that the indictment, and the several proceedings had thereon, might be read; and observed that the counsel at present concerned for Mr. Tandy, had no opportunity of knowing what they were.

Mr.

Mr. Justice *Chamberlaine* said, that as the prisoner had been served with a copy of his indictment, there was no necessity, nor had he a right to have it read.

Mr *Rolleston* then moved, that the writ by virtue of which the indictment had been remanded from the Court of King's Bench, should be read. It was read accordingly, and it recited, " that a writ of *Certiorari* had formerly issued to remove the indictment and all matters touching the same, from Lifford into the Court of King's Bench, and then proceeded to remand the said indictment, and all matters touching the same, in order that the justices of gaol delivery and oyer and terminer might proceed thereon, " in such a manner as they might have done if the said indictment had never been brought into the Court of King's Bench." Mr. Rolleston said, that upon this writ he conceived his client had a right to plead, as if no plea had been put in the Court of King's Bench, inasmuch as this writ authorized the court in which he then stood, to proceed only in such manner " as they might have done, if the said indictment never had been brought into the Court of King's Bench :" the proceedings, therefore, as he contended, were to be taken now, precisely in the same situation, as they stood when they were removed by the writ of *Certiorari* : and at that time it was admitted that the prisoner had not been put to plead. He therefore moved " that the pirsoner be now put to plead."

Mr. *Schoales*, on the same side, said, that the present motion was founded on the presumption, that any proceeding had in the Court of King's Bench, after the indictment was removed thither, must be considered by this Court, as matters of which they had no authority to take cognizance ; a point which he hoped to be able clearly to prove. This Court, he said, derives its jurisdiction from his Majesty's Commissioners of oyer and terminer and of gaol delivery, and is not an emanation from the Court of King's Bench, nor any otherwise dependant thereon. He observed that the writ which had been read, was founded upon two statutes passed in Ireland, the 11 and 12 Geo. 3. c. 34, and 21 and 22 Geo. 3. c. 51. These acts shewed, that by the common law as it stood before they were enacted, this indictment could not have been remanded at all. but the prisoner must have been tried in the Court of King's Bench. But by those statutes, the Court was empowered to remand what ?— not the plea, if any plea was put in—not the other proceeding which might have been had in the Court of King's Bench, but only the prisoner and his indictment; such were the words of the statute ; and what proved demonstratively, that the legislature did not intend to give the Court of King's Bench authority to send down any of the proceedings had before them, was the

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concluding paragraph of the statute, which directed that such indictment should be proceeded on " in such manner as should have been done if the said prisoners, or their indictments had never been brought into the said Court of King's Bench." Now, if Mr. Tandy had not been brought up by the *Certiorari*, nothing could be remanded by the Court of King's Bench but what had been previously removed into it; and what was that? the indictment, and the indictment alone. With respect to the words used in the writ, " all matters touching the same," Mr. Schoales contended, that these words were not found in, nor were they authorized by the statutes which created the writ, and were therefore to be considered as mere surplusage

The Court after hearing the Right Hon. the Attorney General (John Stewart) in reply, refused the motion. Their Lordships were of opinion that the arguments in support of it could only prove that the Court of King's Bench was wrong in sending down the proceedings had thereon; but as the Court had sent these proceedings down, and it appeared from thence to their Lordships, that the prisoner had pleaded to the indictment, they thought themselves bound to take notice of that plea, and to refuse the motion.

Mr. *Rolleston* then moved, " that the prisoner be permitted to withdraw his plea, put it in the Court of King's Bench, and to plead *de novo*." He observed, that this was an application to the discretion of the Court; but that he would shew, from decided authorities in England as well as in Ireland, that it was a motion uniformly complied with in similar circumstances. He then cited the case of the King v. the Dean of St. Asaph, where the indictment having been removed by *Certiorari*, the prisoner pleaded *de novo* in the Court of King's Bench. So in the case of the King v. Agolet, and the King v. Ward, which cases he said were noticed in a celebrated case in this country, the case of Mr. Keon who was indicted and convicted some years ago for murder.

Mr. *Schoales* followed, and in addition to the cases cited by his learned colleague, referred the court to authorities in Carthew, p. 6, the King v. Baker, and the King v. Carpenter, in 4 Viner's Abridgment, in both which cases the prisoner had been allowed to plead *de novo*. He said there was a circumstance in this case in favour of the application, which he did not find in any of the other cases, and which he hoped would decide the Court in the exercise of its discretion: it was this: that at the time the present indictment was found against the prisoner, at the assizes of Lifford, he was a prisoner in the gaol of Kilmainham, and had of course no opportunity of knowing whether the bill of indictment had been found against him in a legal and regular

gular manner, or whether there might not have been some proceedings that were informal, and of which he would have had a right to avail himself if he had been informed of them.

Mr. Justice *Chamberlaine* said, he would be sorry any information would be sent abroad that the prisoner had not had every advantage which by law he was entitled to.

Mr. *Schoales* (after a few minutes conversation with Mr. Tandy, who was placed immediately behind his counsel) desired leave to say, lest from a misunderstanding of the object of his argument, any such idea should arise amongst the numerous audience, as that which the Court had hinted at, that he had instructions from his client to say, and wished also for himself, and for the gentlemen concerned with him to say, that no insinuation was intended; that on the contrary he had himself an opportunity of knowing, and his client was fully sensible that throughout the whole prosecution he had experienced from the Right Hon. Gentleman who conducted it, every indulgence which his situation admitted, and every attention which politeness or humanity could suggest.

Mr. *Attorney General* said, that in affording to the prisoner every indulgence which was consistent with his unfortunate situation he was guided not more by inclination than by duty; a duty which he felt he owed to every person whose prosecution he was obliged to conduct, be his situation in society high or low, and which he trusted he never would forget. He then argued upon the motion, that some ground should have been laid beyond mere allegation, in order to induce the Court to exercise its discretion in the prisoner's favour.

The Court said, that if it appeared to them that any substantial advantage could be derived to the prisoner from their granting this motion, they would comply with it; but none such had been pointed out to them, and therefore they felt themselves bound not to retain the course of justice by complying with it.

The prisoner's counsel then stated, that they had affidavits of the want of a material witness, on which they moved to put off the trial to the next assizes. Three affidavits were read, but they not containing matter sufficient enough to satisfy the Court this motion was also refused.

The Sheriff was then directed to return a jury; and while the pannel was calling over, Mr. Tandy held a short conference with his counsel and with his son James Tandy, and another gentleman a near relation who attended him at the bar during the whole proceedings.

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At this period, Mr. Sinclair, one of Mr. Tandy's counsel, addressed the Court, and intimated his resolution to withdraw from the professional situation assigned to him. He was proceeding to assign his reasons, when the Court stopped him, saying, that such explaination was irregular and unnecessary.

Mr. Tandy then expressed a desire to be heard, and silence having been commanded, he spoke nearly as follows, in a manner at once firm and respectful:

"My Lords,

"It is not my intention to give any further trouble to your Lordships on this occasion; I am sorry your Lordships have had so much. I am happy in having an oppportunity of returning my acknowledgments to the Attorney General throughout this proceeding: in the discharge of the duties of his office he has never forgotten the feelings of a man.

"My Lords, I have read the copy of the indictment with which I was served in the gaol of Kilmainham; I admit that the facts contained in it are true, and have no doubt can be proved: why then should I put your Lordships and the Court to the trouble of going through the form of a trial?—of course, I desire to plead guilty to the indictment."

Mr Justice *Chamberlaine* after a short pause, addressed Mr. Tandy as follows:

"Prisoner at the Bar,

"It is the duty of the Court to apprise you of the consequence of the application which you have made: by pleading guilty you must consider your life at forfeit: you have had able men assigned you as counsel, confer with them, and weigh this matter well before you determine."

Mr. Tandy immediately replied,

"My Lords,

"I had mentioned my design to my counsel, before I made my application to your Lordships; I know they are men of integrity and ability, and I am obliged to them for their exertions. What they could do they have done; but I feel it would be unable for the highest talents on earth, to prevent the facts with which I am charged from being proved, and my love of truth will not allow me now to persevere in that which I know to be a falsehood.

'My Lords, I am fully apprised of the nature of that awful sentence which must be pronounced against me; but I confide in the justice of my cause, and trust I shall meet my fate with the fortitude of a Man!"

The indictment was then read at length, and the prisoner having pleaded guilty, Mr. Justice Chamberlaine, after a short but affecting address, pronounced the sentence of the law.

Mr. Tandy was condemned to die, but to the astonishment of the public, he was not executed, and was respited from week to week—This requires some explanation—The memorable battle of Marengo had changed, in one day, the political system of Europe, and Bonaparte became the principal figure on that interesting stage—By what may be gathered from Mr. Curran's speech, and what every reader of news-papers may recollect, the manner in which Mr. Tandy was arrested at Hamburgh, must be well known—The whole world exclaimed at the late infraction of neutral territory in the seizure of the unfortunate Duke d'Enghien—but part of the world is inclined to forget, that the English Ministry had set a previous example in the violent and illegal seizure of Mr. Tandy, merely for the pleasure of hanging him—and hanged he would have been but for the powerful interference of the Chief Consul, * who threatened to retaliate in case of execution—The English Ministers were in a most perplexing quandary, and now wished most earnestly that they never had seized him—after all their expence and violence, to quit their prey, was a bitter pill—

——Even-handed Juſtice returned
The poiſoned chalice to their own lips.

Thus it is, "when force and power assume the functions of reason and justice." They ſhifted and covered the thing as well as they could—one day they told Mr. Tandy, that he would be hanged immediately—the next that he was to be transported to Botany Bay—at length he was informed (negotiations for peace being then in great forwardness) " that he had permission to reside in any part of the world he pleased, except his Majesty's dominions;" and it was requested, that Mr. Tandy's friends might not make any public exultation *in delicacy to Lord Hardwicke!*— He was taken by night from Lifford, and conveyed through the most

* We are not inclined to eulogize *great* men, but it is a good old maxim, that in doing juſtice, " to give even the Devil his due."—Bonaparte's conduct in regard to M. la Fayette was alſo magnanimous, and deſerves to be recorded——The Court of Vienna, which had broken the treaty of Campo Formio, had wink'd at, if not ſanction'd the murder of the French deputies at Raſtadt, and who had the more than Gothic barbarity to impriſon Madam Fayette and her daughters in a loathſome dungeon, had the meanneſs afterwards to tell lies on the occaſion—When demanded by Bonaparte, he was told that Fayette had been liberated, and had gone it was not known where—When Bonaparte diſcovered the falſhood, he ſent an Aid du Camp on purpoſe to ſet them at liberty—a ſingle French Officer relieved the unhappy priſoners from their dungeon in the heart of the Auſtrian dominions!——Herein let us give due praiſe to the Chief Conſul.

If it be aſked, Pray, Mr. Editor, what connexion has La Fayette's ſtory with Curran's Speeches? —— *Answer*—A great deal, Mr. Critic—Theſe trials aroſe out of the political ſyſtem of Europe; and whatever tends to develope and expoſe the cold-blooded, flinty-hearted, machiavelian Politicians of Europe, muſt be of ſervice to mankind.

most unfrequented roads to Wicklow, where he was embarked for France, and where he arrived in safety, on the 14th of March 1802 — After a very busy, active life of 72 years, he died quietly in his bed at Bourdeaux, and was buried with military honours.

After Mr. Tandy's departure from Ireland, in a conversation on the Malt Bill, his name was mentioned in the British Parliament by Lord Pelham, Lord Limerick, and Mr. Elliot, who spoke of him in a disrespectful manner, particularly the latter gentleman—This gave occasion to the following letter to Lord Pelham from Mr. Tandy, who had assumed the rank of General of Division in the French service:—

To LORD PELHAM.

My Lord,

When business demands the assistance of our pens an apology for writing is useless. I shall not, therefore, trouble you with any, but proceed directly to the point, and as you have thought proper (in conjuction with Lord Spencer) wantonly to introduce my name to the public, I shall, with the same freedom which stimulated you to the attack, commence my defence.

That you have both transgressed the rules of decency, is the softest censure which your conduct will admit of; and with equal propriety I may say, you have broken the laws of justice; for what connexion your wonderful sagacity could discover between a *Malt bill*, (which was the subject of debate) and *Napper Tandy*, time alone must develope. Were it not for one assertion you have made, I should not trouble the public with this appeal, but content myself with the honour of being abused by your Billingsgate Orators, in both Houses, for there are men, my Lord, whose censure is the highest commendation that can be bestowed, and of this number, I am free to confess, that I consider your Lordship as entitled to rank in the first class. You had declared, or the printer has done it for you, "that I made some discoveries to your government." *The assertion I aver to be false.* This may appear uncouth language to a courtly ear; but it is the voice of truth; and I repeat it, my Lord, and say, "*it is a mean, audacious, and infamous falsehood!*"—I never had any connexion or correspondence with your government, or, if I had, they knew my character too well, to attempt to tamper with me. Had you contented yourself with saying: "there were particular circumstances in my case," you would have adhered to the truth, for you know the whole, though you have only let out a part.

As to my life, I never considered myself indebted to your government for it. I hold it to a great and generous people, and to that first of men, the hero and pacificator, who said, "if I did die, that I would die illustrious." In his and their cause

I am ready and willing to shed the last drop of my blood; for with pleasure, I can review my past life, spent in the service of my country, whilst I look with pity and contempt on those who have raised themselves by their prostitution, to the first offices of State; and glory more in the name of a French Citizen, than in being a titled slave.

I am, my Lord, with the same sentiments which I have uniformly cherished and supported, (long before I knew you, as a little Clerk in the Castle of Dublin) a friend to Universal Benevolence, and an enemy to those only who raise their fortunes on their country's ruin!

Bourdeaux, 30 *Nivose*, *an.* 11. *N. TANDY.*

Besides this letter, Mr. Tandy published a narrative of his negociations with the government of Ireland stating all the circumstances of his case — "As he owed his life and liberty to a great and generous nation, he declares himself her soldier, and that he will be found at all times ready to evince his zeal for the support of her power and her glory." With all the gallantry of a French cavalier, he sent a challenge to Mr. Elliot to name some town on the continent to meet him in single combat— Here follows a copy of the challenge:—

To Mr. ELLIOT, M. P. London.

SIR,

THE illiberal attack which you have made upon me in your speech of the 24th of November last, in the British House of Commons, is the cause of my troubling you with this. "My ignorance and insignificance," which you have painted in such glowing colours, ought with a man of sense to have been my protection: but you have proved yourself as deficient in this, as in point of good manners and politeness, which are the true criterion of a gentleman.

You cannot, Sir, but know, (for you pretend to be a man of information) that I hold a high rank in the army of this great and generous nation, which places me upon a footing with the proudest Peer of your island. You know also, that the honor of a Soldier is dearer to him than life—yet, with these facts before you, you have dared to traduce my character, and have attempted to fix a stigma on my name, which nothing can now wipe out, but the blood of one of us. "A French officer must not be insulted with impunity," and you, as well as the country which gave me birth, and that which has adopted me, shall find, that I will preserve the honour of my station. I therefore, demand you to name some town on the Continent, where you will be found, accompanied with your friend and pistols—giving me sufficient time to leave this, and arrive at the place appointed.

Bourdeaux, 12*th Dec* 1802. *N. TANDY*,

General of Division.

Mr. Elliot, as may be well imagined, did not think proper to meet Mr. Tandy; in consequence of which he published the following letter in the Argus, an English News-paper printed in Paris:—

SIR,

Eight weeks having elapsed since I wrote to you, and my invitation not being accepted, or acknowledged, have I not a right to appeal to the Public in vindication of myself from the wanton and unmanly attack which you made upon me?—If the state of my unhappy native country had been the subject of discussion, some allusions might be drawn, some reasons assigned, for the introduction of my name—But this was not the case. The debate was for laying a tax on Great Britain, in which I, as a French citizen, could not possibly be implicated, and therefore, it is evident, that I was wantonly dragged in for the sole purpose of calumny and abuse. That such conduct was unmanly, must be admitted on all hands, as no brave man would ever attack a defenceless person, much less an absent one. In my Letter, I scrupulously refrained from retorting upon you, or using any harsh, or ungentlemanlike expression, though perfectly justifiable from the treatment I had received. I contented myself with that appeal which a man is entitled to, when his character is injured and his honour impeached. But as you skulk from that, and shelter yourself under "undefined privilege," or that more than monstrous idea, "that a British Senator can traduce mankind with impunity"—I am necessiated to say (after having thus exposed your rascality to the world) *that Mr. Elliot is a Calumniator! a Liar! a Poltroon! and a Scoundrel!*

NAPRER TANDY,

Bourdeaux, 5th Feb. 1803.

*** It is neceſſary here to remark, that ſome years ago, Mr. Tandy having been roughly treated by ſome of the Court members in the Iriſh Houſe of Commons, he challenged Mr F. (him who fought Mr. Curran, and who afterwards became Lord C.) who refuſing to meet Mr. T. he threatened to cane him in the public ſtreets—HisLordſhip was remarkable for NOT obſerving the Chriſtian virtue of forgiveneſs—and to this circumſtance is aſcribed Mr. Tandy's arreſtment at Hamburgh, and his ſubſequent ſufferings.

THE

TRIAL

OF

JAMES O'BRIEN

FOR

WILFUL MURDER.

COMMISSION COURT.

THIS day came on, before Lord Yelverton and Mr. Justice Day, the trial of James O'Brien for the wilful murder of John Hoey.

Mr. CURRAN, council for the prosecution stated the case. He observed it was not the ordinary custom for gentlemen of the bar, when prosecuting a man in a case that turned upon the question of life and death, to press many observations either on the Court or the Jury, in order to make any unfair lodgment on the mind of the jury, in order, if it was possible, to excite any anticipated sentiment unfavourable to the prisoner. He would be the more cautious in any observation he should make, because on matter of fact the prisoner had not the same privilege that the prosecutor had, and because the wisdom and the humanity of the law has established, that with respect to a prisoner on the trial of his life, the evidence of criminality must be so plain and clear as that no argument or evidence produced by the defendant could by possibility shake it—but the humanity of the law has also given to the prisoner a great advantage indeed, and that was the solemn and awful duty that was imposed upon the judges not to be his advocate, but certainly to be his counsel.

The prisoner at the bar stood indicted for the wilful and deliberate murder of a fellow creature, which by the laws of all countries, and the ordinances of every nation, barbarous or civilized, has this positive and recorded principle, that "whoever shall

shall shed man's blood, by man shall his blood be shed." When God gave life to man, he imposed it as a duty on him to protect that life he entrusted him with, until it was the will of him that gave it to take it away—and society when it instituted the severe law of capital punishment on the head of the deliberate and wilful murderer, did only carry the commands of God into effect through the medium of the municipal law.

It would be necessary for the jury to carry in their mind, that though it is found necesary to remove the murderer from the earth, yet every man that lifted his hand against his fellow man, even though life should be terminated by the blow, is not called murder by the law, nor does the law consider it as such—for as the most enlightened and humane judge that ever wrote or thought upon the subject (Judge Foster) has declared, that it might be attended with a depravity bent on mischief. To bring a man within the meaning of the law, it must be the cool and deliberate taking away the life of a fellow creature, attended by such circumstances as take away from the murderer all plea of self defence—because the law does allow that sort of proof for a prisoner, and does lean towards the infirmity and frailty of human nature. The jury ought to recollect that the prisoner was but a man—they ought to recollect that themselves were but men—and the judges would recollect that they were but men, sitting in judgment on their fellow man.

Mr. Curran then said, it would not be necesary minutely to state the evidence intended to be produced, but merely so much as would enable the jury to understand the nature of the case; it would therefore be necessary for him to depart from the general rule and make a few observations.

The present trial was considered abroad as of some expectation. He very well knew, that whenever a judicial enquiry became the topic of public and general conversation, that every conversation was in itself a little trial of the fact. The voice of public fame, the falsest witness that ever was sworn or unsworn is always ready to bear testimony to the prejudice of an individual; the mind becomes heated, and it can scarcely be expected even in a jury box, to find a cool, and reflecting, and uninterested mind. There are two tribunals to which every man must be amenable, the one a municipal tribunal, the other the great and general and despotic tribunal of public reputation. If the jury had any reason to suppose, that any man who came before them had been already tried by public fame and condemned, he begged to remind the jury of the solemn duty that justice imposed on them to turn their eyes away from a recollection that any sentence of that sort of condemnation had been pronounced by the voice of public reputation; and if they thought

thought that his character had sunk under such a sentence, he would remind the jury that the infamy of such a condemnation was enough without their taking it into their consideration; it was the duty of the jury to leave the decrees of that court of public reputation to be executed by its own authority, for they had no right to pass sentence of condemnation on any man because that ill judging court might have passed sentence on his character; they ought to reflect that the evidence given before that court was unsworn, that there was no deposition of any witnesses upon oath, and therefore they were bound to consider the evidence before them naked and simple as if they had never heard the name of the man they were to try, and the sentence of condemnation that public fame had pronounced on his character. There was but one point of view in which public character ought to be taken, and that was, that if there was doubt, in such a case general good character ought to have great weight and go towards the acquittal of the accused; but should it so happen that general bad character should be thrown into the scale, it ought not to have one twentieth part of the weight that good character should have.

The jury, he was satisfied, would deliberately and cautiously weigh the evidence to be produced, and they would be perfectly satisfied in their minds of the guilt of the prisoner, and they must feel an irresistable and coercive force acting on them from the weight of the evidence, before by their verdict they pronounced that melancholy sentence that would remove a murderer from the face of the earth.

EVIDENCE *for the* CROWN.

Mrs Anne Hoey, examined by Mr. M'Nally—swore, that the deceased was her husband—that previously to the unfortunate affair in question, he was in a very bad state of health, being confined to the house, taking medicines, and subject to a variety of complaints whereby he became very weak; and the witness particularly deposed, that he was rendered almost blind, and had been obliged shortly before he was killed, to have five blisters on him, and an issue in his arm—that he walked on the evening above stated to take the air, after which the witness never beheld him, until she saw him dead in Madam Stephen's hospital.

Surgeon Colles, examined by Mr. Colles—Is resident surgeon at Stephen's hospital—that the body of the deceased having been taken on the evening aforesaid, to his hospital, he did, on the following day surgically examine it, in order to discover what were the wounds, and found that the man had received a stab with some two edged weapon, in the left side—the wound went five inches into the body, and penetrated the heart.

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Andrew Downey examined by Mr. M'Nally—Was in the field on the evening of 4th May—saw the deceased standing near the wall of the field—peaceably and quietly—detached from a great number of persons playing at foot-ball and wrestling—heard a cry of, *here is O'Brien the informer*,* and saw the prisoner and two invalids come over the wall; upon which the mob in the field immediately ran away—that as soon as the prisoner got into the field he ran at the deceased and gave him a kick and a blow—that the deceased retreated sideways, and whilst retreating, the witness saw the prisoner, take a dagger from under his coat, with which he stabbed the deceased, who instantly fell—that the prisoner immediately ran away a few paces, and then returned and raised the hand of the deceased, which when he let go fell to the ground, that he then examined the deceased's coat where the wound was, and immediately ran off—that thedeceased did not in any manner assault or raise his hand against the prisoner—he might have said something to him without the witness hearing it; but he could not do any thing without the witness seeing it—the deceased was by no means one of the crowd that was playing, but seemed merely a spectator, and in a very sickly state of body.

Laurence Beaghan, examined by Mr. Colles—corroborated minutely the examination of the witness Downey. He was cross examined by Mr. Green, and acknowledged that the crowd was very great, upwards of 1000 persons.

Here the case ended for the prosecution.

On behalf of the prisoner Alderman Mander was produced. He was examined by Mr. Ridgeway, and said, that from the frequency of crowds in the before mentioned field on Sundays and holidays, and from secret information obtained by him, that turbulent persons were in habits of assembling there, so as to become not merely a nuisance, but a terror to the peaceable inhabitants in the neighbourhood, he was induced, in pursuance of his public duty as a Magistrate, to ask the assistance of Major Sirr to watch the crowd, and duly examine whether or not the object of their meeting was tumultuous, as had been privately communicated to him, and as he had reason to suspect from remonstrances made in vain, on previous occasions, to the persons in habits of assembling there, to disperse to their homes. The Alderman said, he had reason to entertain strong suspicion that the meeting was for a bad purpose, from the symptoms of disturbance it exhibited before Major Sirr attended, and from the reluctance of the multitude, amounting to the best estimate he could make on the spot, to upwards of 1000 men, to comply with an expostulation urging them to immediately leave the field. Major Sirr having attended, it was thought expedient

* See Finney's Trial, p. 173.

ent to preclude the crowd from departing, until a discovery could be made of its object in assembling, and to make a strict examination whether there were not suspected persons in it.—Accordingly the avenues from the field were stopped by military men. Mr. Alderman Manders and Major Sirr went together to Stephen's lane, and examined the persons as they came out—two of whom on suspicion, were taken into custody—and O'Brien with two or three invalid soldiers, were ordered to go and prevent the crowd from getting away at the Bow-lane side. Alderman Manders heard no riot, or saw no resistance. The crowd, with the exception of the two men above stated, was suffered, on examination, to quietly depart, and he neither knew nor heard any thing of the man's death until about eight or nine o'clock at night.

Major Sirr repeatad in his deposition the substance of the Alderman's evidence, and further stated, that about six weeks before the affray in question, he was induced not to trust arms into the hands of the prisoner, O'Brien, on account of his shewing some signs of mental derangement—Major Sirr procured for him the aid of the surgeon-general, who after the application of medicines, pronounced the prisoner out of danger.

Cross examined by Mr. M'Nally—The cause of the prisoner's derangement was having taken too much medicine—but on the day the deceased was killed, he did not think him deranged.

Andrew Given, an invalid soldier, deposed, that he was commanded by his captain to go as corporal and assist the civil power in quelling a mob in the aforesaid field—himself and another man went into the field accompanied by O'Brien. On their entrance from Bow-lane, the crowd pressed upon them, endeavouring to escape by that avenue, but he levelled his musket, which was not loaded, at the same time ordering them not to proceed or he would fire and use force. The persons assembled hastened away towards the hospital side of the field, all but one man, who strove to get over the wall into Bow-lane, and who was stopped by the prisoner, O'Brien, between whom and the said man a struggle took place. The witness did not see O'Brien stab the man, (but he swore that the man, he knew not the deceased) grappled O'Brien, and used his hands as if he wanted to beat the prisoner—he saw a man lying about 11 or 12 yards from the wall near Bow-lane, as he returned from following the crowd, which he was induced to pursue to a short distance, from a disposition exhibited by some persons to return to that side and assist against O'Brien. The witness saw no symptoms of blindness or weakness in the man who remained and struggled with the prisoner, with whom he saw no dagger or sharp weapon drawn in the affray.

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On his cross examination by Mr. M'Nally, he swore that the deceased seemed to be heading the mob, and that he advanced in a fighting posture, and seemed in the full vigour of health.

James Baxter, another invalid, was produced—he swore to the orders given to the party to which the witness belonged, and their going into the field, but he did not see the deceased and prisoner engaged—in endeavouring to get over the wall the witness fell back, and did not get in until after the deceased was lying on the ground.

Mr. M'Nally, as counsel for the prosecution, recalled the witness Downey, in order to invalidate the evidence of the two invalid soldiers. The witness positively swore, that the deceased, after he who was assaulted by the prisoner, was in the act of retreating as fast as in all appearance he could, when the prisoner stabbed him. He, the witness, on looking back, and seeing the man fall, was proceeding to return and take him from the ground, but one of the invalid soldiers refused to let him approach for some time. The witness said, 'the man is murdered!' 'If he is murdered,' said the invalid soldier, 'it was not we but the man in coloured clothes that murdered him.'

Mr. Sohan, an apothecary, was also produced to establish the bad state of health of Mr. Hoey, before the affray. He visited him about a week previous to his death, and afterwards sent him medicines to effect the recovery of his sight and bodily strength which had been greatly impaired by illness—he made up four blisters to be applied to his back, and cut an issue in his arm

The commanding officer at the invalid-barrack, James's street, gave the two invalids who attended with O'Brien, excellent characters, as good soldiers and honest men.

Here the evidence being closed on both sides, the Hon. Justice Day proceeded to charge the jury. The learned Judge strictly recapitulated the evidence dwelt with force and precision on the leading circumstances of the case, and then ably laid down the points of law.

It was his duty to tell the gentlemen of the jury, that any provocation that could be given by an unarmed person on the occasion, could not justify the prisoner to take away his life. Such was the law, that made allowance for human frailty, were even the testimony of the invalid admitted, between which, and the evidence of Downey and Beaghan, there appeared a contradiction, on which, the only difficulty of decision, respecting the fact, hinged—If Downey's deposition gained full credit, the prisoner's case must be considered attended with inhuman aggravation, as thereby it appeared the unfortunate man was killed in retreating. Where thus the evidence on both sides was

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at an issue, the learned judge after duly commenting on the circumstances, and contra-distinguished clashing testimony, recommended to the jury to give each whatever weight in their consciences, on serious enquiry, it could be found to deserve—and it might be, at the same time, not improper to reflect, that the prisoner, from the nature of his employment, became much obnoxious. If public odium influenced any attack on him in the unfortunate affray, the jury would do well to investigate how far, and if they conceived his case deserving any consideration on that ground, they were bound, no doubt, to give it—but his Lordship here again took the law distinction, that such provocation, were it given, could not be received as a plea to set off the prisoner's crime.

The jury, without leaving the box, found the prisoner GUILTY.

On which Mr. Justice Day, with impressive and pathetic solemnity, passed sentence of death on the culprit. The learned Justice observed, on the awful occasion, that if murder admitted of aggravation, the felon's crime which had been clearly established in evidence to the full satisfaction of the Court and jury, was aggravated with the most unprovoked, wanton, and savage cruelty—he murdered an inoffensive, infirm, and defenceless man; a man with whom it is probable he had no previous intercourse, and, in consequence, against whom he could harbour no particular malice—but it was therefore substantiated that he cherished malice propense against mankind in general, whence he became a member unfit for society, for whose sake and example he must be made an ignominious, a disgraceful sacrifice!—he should be cut off—his fate was inevitable!—And here the learned judge, with words that apppeared to penetrate every breast present, advised the unhappy felon, that the imperious provisions of offended justice restricted the mercy of the Court, were it even inclined to grant any considerable pause between his sentence and his execution; the law gave him but 48 hours before his being called to answer for his crimes at an eternal bar—where the deepest previous penitence alone could operate as atonement, and where, therefore, the learned judge hoped, he would endeavour, by using every intermediate moment in contrition and devotion, to prepare himself to appear in the presence of the Searcher of Hearts!

The honourable and learned Justice then sentenced him to be executed on Monday next, and ordered his body to be delivered to the Sheriffs of the city, for dissection in Surgeon's hall.

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On Monday, James O'Brien, pursuant to his sentence, was executed in front of the New Prison, Green-street. The concourse of spectators attracted by the awful scene, was such as we never before witnessed on a like occasion; not only in point of numbers but in point of conduct; public execration could scarcely be carried farther in its expression, and the most senseless and abandoned creature that mixed in the rejoicing crowd must have drawn some instruction from the scene before him, and involuntarily have prayed the Almighty, "that his latter end should not be like unto that of this man."

His crime was great, and his punishment just—but although it may have been the tribute of abhorrence which nature bestows on the foul deed of the murderer, yet we could have wished that there had been less joy expressd on the occasion. No doubt the public exultation was just, and it was fitting that such a wretch should not be among men—but, however just, it shocks the civilized mind to see a multitude of human beings raise a cry of delight at the death of a fellow-creature, and posthumous hatred or vengeance are not reconcileable to Morality or Religion. This, however, tho' shocking, is instructive, and not without its beneficial influence in the state of society: there are who can brave the pangs of death and those of living shame, but cannot bear that their last moments, tho' ignominious, should elicit from the breast of a fellow-creature no spark of pity—who cannot bear the idea of a community rejoicing in their death, and finding no monument but the public odium—no epitaph but the public curse. On such minds, the scene of Monday must have had considerable influence, and thus, though frightful and digusting, must have been useful—It will teach them, even without looking forward to Divine Justice, that, within this earthly pale, death is not the end of punishment, and although privation of life may satisfy the sentence of the law, the sentence of public feeling and opinion heaps execration on his unburied corpse, and follows him from the gallows to the gibbet—attends him even beneath the surgeon's knife!

COURT OF KING'S BENCH.

HEVEY *v.* SIRR.

THIS case will eminently shew the *beauties* of what is emphatically called a "strong government" — It was an action brought by the plaintiff John Hevey against the defendant Charles H. Sirr for assault and false imprisonment, and tried before Lord Kilwarden, Chief Justice of the King's Bench.

MONDAY, *May* 16, 1802.

Mr. CURRAN stated the case for the plaintiff — He began by telling the jury, it was the most extraordinary action he had ever met with. It must have proceeded from the most unexampled impudence in the plaintiff, if he has brought it wantonly, or the most unparalleled miscreancy in the defendant if it shall appear unsupported by proof—And the event must stamp the most condign and indelible disgrace on the guilty defendant, unless an unworthy verdict should shift the scandal upon another quarter. On the record, the action, he said, appeared short and simple ;—it was an action of trespass *vi et armis*, for an assault, battery, and false imprisonment. But the facts that led to it, that explain its nature, and its enormity, and of course that should measure the damages, were neither short nor simple—the novelty of them might surprize, the atrocity must shock their feelings, if they had feelings to be shocked—but he said, he did not mean to address himself to any of their proud feelings of liberty—The season for that was past.

There was indeed, he said, a time, when, in addressing a jury upon very inferior violations of human rights, he had felt his bosom glow, and swell with the noble and elevating consciousness of being a free man, speaking to free men, and in a free country ;—where, if he was not able to communicate the generous flame to their bosoms, he was at least not so cold as not to catch it from them. But that was a sympathy which he was not now so foolish as to affect either to inspire, or partici-

ticipate. He would not insult them by the bitter mockery of such an affectation; buried as they were he did not wish to conjure up the shades of departed Freedom to flutter round their tomb, to haunt or to reproach them. Where Freedom is no more, it is a mischievous prophanation to use her language; because it tends to deceive the man who is no longer free, upon the most important of all points; that is, the nature of the situation to which he is reduced; and to make him confound the licentiousness of words, with the real possession of freedom. He meant not therefore, he said, to call for a haughty verdict, that might humble the insolence of oppression, or assert the fancied rights of independence. Far from it; he only asked for such a verdict as might make some reparation for the most extreme and unmerited suffering, and might also tend to some probable mitigation of the public and general destiny

For this purpose, he said, he must carry back their attention to the melancholy period of 1798. It was at that sad crisis, that the defendant from an obscure individual, started into notice and consequence—It is in the hot-bed of public calamity, that such portentous and inauspicious products are accelerated without being matured.—From being a Town Major, a name scarcely legible in the list of public incumbrances, he became at once invested with all the real powers of the most absolute authority. The life and the liberty of every man seemed to be given up at his disposal. With this *gentl man's* extraordinary elevation, began the story of the sufferings and ruin of the plaintiff. It seems, a man of the name of M'Guire, was prosecuted for some offence against the State. — Mr. Hevey the plaintiff, by accident, was in Court; he was then a citizen of wealth and credit, a brewer in the first line of that business. Unfortunately for him he had heretofore employed the witness for the prosecution, and found him a man of infamous character—Unfortunately for himself, he mentioned this circumstance in Court. The counsel for the prisoner insisted on his being sworn; he was so. The jury were convinced that no credit was due to the witness for the Crown; and the prisoner was accordingly acquitted. In a day or two after Major Sirr met the plaintiff in the street, asked how he dared to interfere in his business, and swore by God " he would teach him how to meddle with *his* people."

Gentlemen, said Mr. Curran, there are two sorts of prophets, one that derives its source from real or fancied inspiration, and who are sometimes mistaken—But there is another class, who prophecy what they are determined to bring about themselves. Of this second, and by far the most authentic class, was the *Major;* for Heaven, you see, has no monopoly of prediction.

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On the following evening, poor Hevey was dogged in the dark into some lonely ally; there he was seized he knew not by whom, nor by what authority—and became, in a moment, to himself, to his family and his friends, as if he never had been. He was carried away in equal ignorance of his crime, and of his destiny; whether to be tortured, or hanged, or transported. His crime he soon learned; it was the treason he had committed against *the majesty of Major Sirr!*—He was immediately conducted to a new place of imprisonment in the Castle yard, called the Provost. Of this mansion of misery, of which you have since heard so much, Major Sandys was, and I believe yet is the keeper—A gentleman of whom I know how dangerous it is to speak, and of whom every prudent man will think, and talk with all due reverence. He seemed a twin star of the defendant — equal in honour, equal also (for who could be superior?) in probity and humanity. To this gentleman was my client consigned, and in his custody remained about seven weeks, unthought of by the world, as if he had never existed. The oblivion of the buried is as profouud as the oblivion of the dead; his family may have mourned his absence, or his probable death, but why should I mention so paltry a circumstance? the fears or the sorrows of the wretched give no interruption to the general progress of things. The sun rose and the sun set, just as it did before—the business of the Government, the business of the Castle, of the feast, or the torture, went on with the usual exactness and tranquility.

At length Mr. Hevey was discovered among the sweepings of the prison, and was at last to be disposed of—*He was at last honored with the personal notice of Major Sandys!*—"Hevey (says the *Major*) I have seen you ride a smart sort of a mare; you can't use her here; you had better give me an order for her."—The plaintiff, you may well suppose, by this time had a tolerable idea of his situation; he thought he might have much to fear from a refusal, and something to hope from compliance; at all events, he saw it would be a means of apprizing his family that he was not dead—he instantly gave the order required. The *Major* graciously accepted it, saying "your courtesy will not cost you much; you are to be sent down to-morrow to Kilkenny to be tried for your life; you will most certainly be hanged; and you can scarcely think that your journey to the other world will be performed on horseback."—The humane and honorable *Major* was equally a prophet with his compeer. The plaintiff on the next day took leave of his prison, as he supposed for the last time, and was sent under a guard to Kilkenny, then the head quarters of Sir Charles Asgill,* there to be tried by court martial for such crimes as might chance to be alledged against him. In

* The same personage who once made a figure in this country—If we believe the melancholy history of the Irish rebellion, the mercy that was shewn to himself in America, he did not shew to others in Ireland.

In any other country, the scene that took place on that occasion might excite no little horror and astonishment; but with us, these sensations are extinguished by constant repetition.—I am instructed, that a proclamation was sent forth, offering a reward to any man, who would come forward, and give any evidence against the traitor Hevey. An unhappy wretch who had been shortly before condemned to die, and was then lying ready for execution, was allured by the proposal. His integrity was not firm enough to hesitate long, between the alternative proposed; pardon, favor, and reward, with perjury on one side, the rope and the gibbet on the other.—His *loyalty* decided the question against his own soul. He was examined, and Hevey was appointed by the sentence of a mild, and no doubt, *enlightened* Court Martial, to take the place of the witness, and succeed to the vacant halter.

Hevey, you may suppose, now thought his labors at an end, but he was mistaken; his hour was not yet come. You are probably, gentlemen, or you my Lord are accounting for his escape, by the fortunate recollection of some early circumstances, that might have smote upon the sensibility of Sir Charles Asgill, and made him believe, that he was in debt to Providence for the life of one innocent, though a convicted victim. But it was not so; his escape was purely accidental. The proceedings upon his trial, happened to meet the eye of Lord Cornwallis. The freaks of Fortune are not always cruel; in the bitterness of her jocularity, you see she can adorn the miscreancy of the slave in the trappings of power, and rank, and wealth. But her playfulness is not always inhuman; she will sometimes in her gambols, fling oil upon the sufferer; she will sometimes save the captive from the dungeon and the grave, were it only, that she might afterwards re-consign him to his destiny, by the reprisal of capricious cruelty upon fantastic commiseration.—Lord Cornwallis read the transmiss of Hevey's condemnation; his heart recoiled from the detail of stupidity and barbarity.—He dashed his pen across the odious record, and ordered that Hevey should be forthwith liberated. I cannot but highly honor him for his conduct in this instance; nor, when I recollect his peculiar situation at that disastrous period, can I much blame him for not having acted towards that Court, with the same vigor and indignation, which he has since shewn with respect to those abominable jurisdictions.

Hevey was now a man again; he shook the dust of his feet against his prison gate; his heart beat the response to the anticipated embrace of his family, and his friends, and he returned to Dublin. On his arrival there, one of the first persons he met was his old friend, *Major Sandys*. In the eye of poor Hevey, justice and humanity had shorn the *Major* of his beams,

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he no longer regarded him with respect or terror. He demanded his mare; observing that though he might have travelled to heaven on foot, he thought it more comfortable to perform his earthly journies on horseback. "Ungrateful villain, (said the Major) is this the gratitude you shew to his Majesty and to Me, for our clemency to you?—You shan't get possession of the beast, which you have forfeited by your treason, nor can I suppose, that a noble animal, that had been honored with conveying the weight of duty and allegiance, could condescend to load her loyal loins with the vile burden of a convicted traitor." As to the Major, (said Mr. Curran) I am not surprised that he spoke, and acted as he did. He was no doubt astonished at the impudence and novelty, of calling the privileges of official plunder into question. Hardened by the numberless instances of unpunished acquisition, he had erected the frequency of impunity into a sort of warrant of spoil and rapine. One of these instances, I feel, I am now bringing to the memory of your Lordship.

A learned and respected brother Barrister had a silver cup; the *Major* heard that for many years it had born an inscription of "*Erin go bragh*," which means "Ireland for ever." The *Major* considered this perservance in guilt for such a length of years, as a forfeiture of the delinquent vessel.—My poor friend was accordingly robbed of his cup—But upon writing to the then Attorney General, that excellent officer felt the outrage, as it was his nature to feel every thing that was barbarous or base; and the Major's loyal side-board was condemned to the grief of restitution. And here (said Mr Curran) let me say in my own defence, that this is the only occasion, upon which I have mentioned this circumstance with the least appearance of lightness. I have often told the story in a way that it would not become me to tell it here. I have told it in the spirit of those feelings which are excited at seeing, that man could be sober and humane at a crisis, when so many thousands were drunk and barbarous. And probably my statement was not stinted by the recollection, that I held that person in peculiar respect and regard. But little does it signify, whether acts of moderation and humanity are blazoned by gratitude, by flattery or by friendship, they are recorded in the heart from which they are sprung; and in the hour of adverse vicissitude, if it should ever come, sweet is the odour of their memory and precious is the balm of their consolation—But to return—

Hevey brought an act on for his mare.—The *Major* not choosing to come into Court, and thereby suggest the probable success of a thousand actions, restored the property, and paid the costs of suit, to the Attorney of Mr. Hevey. It must perhaps strike you, my Lord (said Mr. Curran) as if I was stating what,

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Was not relevant to the action. It is materially pertinent; I am stating a system of concerted vengeance and oppression. These two men acted in concert; they were Archer and Aimwell—You master at Litchfield and I at Coventry — You plunder in the jail, I tyrant in the street. And in our respective situations, we will co-operate in the common cause of robbery and vengeance. And I state this because I see *Major Sandys* in Court—and because I feel I can prove the fact, beyond the possibility of denial. If he does not dare to appear so called upon, as I have called upon him, I prove it by his not daring to appear. If he does venture to come forward, I will prove it by his own oath, or if he ventures to deny a syllable, that I have stated, I will prove it by irrefragable evidence of record, that his denial is false and perjured.

Thus far, gentlemen, (said Mr. Curran) we have traced the plaintiff through the strange vicissitudes of barbarous imprisonment, of attrocious condemnation, to the accidental deliverance. Here Mr. Curran described the feelings of himself (Hevey) and his family, upon his restoration; his difficulties on his return; his struggles against the aspersions on his character, his renewed industry, his gradual success; the implacable malignity of *Sirr* and of *Sandys*; and the immediate cause of the present action. Three years (said Mr. Curran) had elapsed, since the deliverance of my client; the public atmosphere had cleared—the private atmosphere of Heveyseemed to have brightened, but the malice of his enemies had not been appeased.—On the 8th of September last, Mr. Hevey was sitting in a public coffee house; *Major Sirr* was there. Mr. Hevey was informed that the *Major* had at that moment said, that he (Hevey) ought to have been hanged. The plaintiff was fired at the charge; he fixed his eye on *Sirr*, and asked, if he had dared to say so. *Sirr* declared that he had, and had said truly. Hevey answered that he was a slanderous scoundrel. At the instant *Sirr* rushed up on him, and assisted by three or four of his satellites, who had attended him in disguise, secured him and sent him to the Castle guard, desiring that a receipt might be given for the villain. He was sent thither The officer of the guard chanced to be an Englishman, but lately arrived in Ireland; he said to the bailiffs "if this was in England, I should think this gentleman entitled to bail; but I don't know the laws of *this* country. However, I think you had better loosen those irons on his wrist, or I think they may kill him."

Major Sirr, the defendant, soon arrived, went into his office, and returned with an order which he had written, and by virtue of which Mr. Hevey was conveyed to the custody of his old friend and jailer, *Major Sandys*. Here he was flung into a room of about 13 feet by 12—it was called the *Hospital of the Pro-*

provost. It was occupied by six beds, in which were to lie 14 or 15 miserable wretches, some of them sinking under contagious diseases. On his first entrance, the light that was admitted by the opening of the door, disclosed to him a view of his sad fellow-sufferers, for whose loathsome society he was once more to exchange the chearful haunts of men, the use of open air, and of his own limbs; and where he was condemned to expiate the disloyal hatred and contempt which he had dared to show to the over-weening and felonious arrogance of slaves in office, and minions in authority—Here he passed the first night without bed or food. The next morning his humane keeper the Major appeared. The plaintiff demanded "why he was imprisoned," complained of hunger, and asked for the gaol allowance. *Major Sandys* replied with a torrent of abuse, which he concluded by saying—"Your crime is your insolence to *Major Sirr*; however, he disdains to trample upon you—you my appease him by *proper* contrite submission; but unless you do so, you shall stay where you are. I tell you this, that if Government do not protect *us*, by God we will not protect *them* — You will will probably (for I know your insolent and ungrateful hardness) attempt to get out by an Habeas Corpus, but on that you will find yourself mistaken as such a rascal deserves." Hevey was insolent enough to issue aHabeas Corpus, and a return was made upon it, "that Hevey was in custody under a warrant from General Craig on a charge of high treason." That this return was a gross falshood, fabricated by Sirr, I am instructed to assert. Let him prove the truth of it if he can.—The judge before whom this return was brought, felt, that he had no authority to liberate the unhappy prisoner; and thus, by a most inhuman and audacious lie, my client was again remanded to the horrid mansion of pestilence and famine.

Mr. Curran proceeded to describe the feelings of Mr. Hevey —the despair of his friends—the ruin of his affairs—the insolence of Sandys—his offer to set him at large, on condition of making an abject submission to Sirr—the indignant rejection of Hevey—the supplication of his father and sister, rather to submit to an enemy, however base and odious, than perish in such a situation—the repugnance of Hevey—the repetition of kind remonstrance, and the final submission of Hevey by their intreaties—his signing a submission, dictated by Sandys, and his enlargement from confinement. Thus, said Mr Curran, was he kicked from his gaol into the common mass of his fellow slaves, by yielding to the tender intreaties of the kindred that loved him, to sign what was, in fact, a release of his claim to the common rights of a human creature, by humbling himself to the brutal arrogance of a pampered slave—But he did suffer the dignity of his nature to be subdued by its kindness—he has been enlarged, and he has brought the present action.

As to the facts that had been stated, Mr. Curran said, he would make a few observations.—It might be said for the defendant, that much of what was stated may not appear in proof. He would not have so stated the case, if he had not seen *Major Sandys* in Court; he had therefore put the facts against him in a way, which he thought the most likely to rouse to a defence of his own character, if he dared to be examined as a witness. He had, he trusted, made him feel, that he had no way of escaping universal detestation, but by denying those charges, if they were false, and if they were not denied, being thus publicly asserted his entire case was admitted—his original oppression in the provost was admitted—his robbery of the cup was admitted—his robbery of the mare was admitted—the lie he so infamously forged on the Habeas Corpus was admitted—the extortion of the infamous apology was admitted. Again, said Mr. Curran, I challenge this worthy compeer of a worthy compeer, to make his election, between proving his guilt by his own corporal oath, or by the more credible modesty of his silence.

Now, said Mr. Curran I have given you a sketch of this extraordinary history. No country, governed by any settled law or treated with common humanity, could furnish any occurences of such unparalleled atrocity; and if the author of Caleb Williams, or of the Simple Story, were to read the tale of this man's sufferings, it might humble the vanity of their talents, (if they are not too proud to be vain) when they saw how much a more fruitful source of incident could be found in the infernal workings of the heart of a malignant slave, than in the richest copiousness of the most fertile and creative imagination. But it is the destiny of Ireland to be the scene of such horrors, and to be stung by such reptiles to madness and to death.

And now, said Mr. Curran, I feel a sort of melancholy pleasure, in getting nearly rid of this odious and nauseous subject. It remains to me only to make a few observations as to the damages you ought to give, if you believe the case of the plaintiff to be as I have stated. I told you before, that neither pride nor spirit belonged to our situation, I should be sorry to inflame you into an apish affectation of the port and stature of freedom or independance. But my advice to you, is to give the full amount of the damages laid in the declaration, and I'll tell you why I give you that advice: I think no damages could be excessive, either as a compensation for the injury of the plaintiff, or as a punishment of the savage barbarity of the defendant; but my reasons for giving you this advice lye much deeper than such considerations; they spring from a view of our present most forlorn and disastrous situation. You are now in the hands of another country; that country has no means of knowing your real condition, except from the information that she may ac-

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cidentally derive from transactions of a public nature. No printer would dare to publish the thousand instances of atrocity, which we have witnessed as hideous as the present, nor any one of them, unless he did it in some sort of confidence, that he could scarcely be made a public sacrifice by brutal force, for publishing what was openly proved in a court of justice. Mr. Curran, here made some pointed observations on the state of a country where the freedom of the Press is extinguished, and where another nation, by whose indolent mercy, or whose instigated fury, we may be spared, or sacrificed, can know nothing of the extent of our sufferings, or our delinquency, but by casual hearsay.

I know, said he, that those philosophers have been abused, who think that men are born in a state of war. I confess I go further, and firmly think they cannot be reclaimed to a state of peace. When I see the conduct of man to man, I believe it.—When I see the list of offences in every criminal code in Europe—when I compare the enormity of their crimes with the still greater enormity of their punishments, I retain no doubt upon the subject. But, if I could hesitate as to men in the same community, I have no doubt of the inextinguishable malignity, that will forever inflame nation against nation. Well was it said, that a "nation has no heart;" against each other they are uniformly envious, vindictive, oppressive and unjust What didSpain feel for the murders or the robberies of the west? —Nothing—And yet, at that time, she prided herself as much as England ever did on the elevation of her sentiment and the refinement of her morality. Yet what an odious spectacle did she exhibit?—Her bosom burning with all the fury of rapine and tyranny; her mouth full of pious praises of the living God, and her hands red with the blood of his innocent creatures. When I advise you therefore to mark your feelings of the case before you, don't think I mean, that you could make any general impression on the morality or tenderness of the country, *whose property we are become*. I am not so foolish as to hope any such effect; practicable justice and humanity are virtues that require laborious acts, and mortifying privations; expect not therefore to find them; appeal not to them. But there are principles and feelings substituted in their place, a stupid perseverance and admiration of self, an affectation of humanity and a fondness for unmerited praise, these you had, for they cost you nothing; and upon them you may produce some effect. When outrages of this kind are held up to the world, as done under the sanction of their authority, they must become odious to mankind, unless they let fall some reprobation on the immediate instruments and abettors of such deeds. An Irish Lord Lieutenant will shrink from the imputation of countenancingthem

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England will see that it is not her interest to encourage an infernal spirit of subaltern barbarity, that reduces a man to a condition lower than that of the beast of the field. They will be ashamed of employing such instruments as the present defendant. When the Government of Ireland lately gave up the noted O'Brien to the hands of the executioner, I have no little reason to believe they suffered as they deserved on the occasion. I have no doubt, but that your verdict of this day, if you act as you ought to do, will produce a similar effect. And as to England, I cannot too often inculcate upon you, that she knows nothing of our situation. When the torture was the daily and ordinary system of our executive government, it was denied in London with a prodigacy of effrontery, equal to the barbarity with which it was exhibited in Dublin; and, if the facts that shall appear to day, should be told on the other side of the water, I make no doubt, but very near one hundred worthy persons would be ready to deny their existence upon their honour, or if necessary, upon their oaths!

I cannot also but observe to you (continued Mr. Curran) that the real state of one country is more forcibly impressed on the attention of another, by a verdict on such a subject as this, than it could be by any general description. When you endeavour to convey an idea of a greater number of barbarians, practising a great variety of cruelties upon an incalculable number of sufferers, nothing defined or specific finds its way to the heart, nor is any sentiment excited, save that of a general erratic unappropriated commisseration. If, for instance, you wished to convey to the mind of an English matron, the horrors of that direful period, when, in defiance of the remonstrance of the ever to be lamented ABERCROMBY,* our poor people were surrendered to the licentious brutality of the soldiery, by the authority of the State; you would vainly endeavour to give her a general picture of lust, and rapine, and murder, and conflagration. By endeavouring to comprehend every thing, you would convey nothing. When the father of poetry wishes to pourtray the movements of contending armies, and embattled field he exemplifies only, he does not venture to describe the perplexed and promiscuous conflicts of adverse hosts, but by the acts and feats of a few individuals, he conveys a notion of the vicissitudes of the fight and fortune of the day. So should your story to her keep clear of the generalities; instead of exhibiting the picture of an entire province, select a single object; and even if that single object do not release the imagination of your hearer from its task by giving more than an outline, take a cottage; place the affrighted mother of her orphan daughters at the door, the paleness of death upon her face

* See Historical Sketch, p. 25.

face, and more than its agonies in her heart; her aching eye, her anxious ear, struggling through the mists of closing day, to catch the approaches of desolation and dishonour. The ruffian gang arrives, the feasts of plunder begins, the cry of madness kindles into circulation. The wandering glances of the ravisher becomes concentrated upon the shrinking and devoted victim. You need not dilate, you need not expatiate; the unpolluted mother to whom you tell the story of horror, beseeches you not to proceed; she presses her child to her heart, she drowns it in her tears; her fancy catches more than an Angel's tongue could describe; at a single view she takes in the whole miserable succession of force, of profanation, of despair, of death—So it is in the question before us. If any man shall hear of this day's transaction, he cannot be so foolish as to suppose that we have been confined to a single character, like those now brought before you. No, gentlemen, far from it; he will have too much common sense, not to know that outrages like this are never solitary; that, where the public calamity generates imps like these, their number is as the sands of the sea, and their fury as insatiable as its waves. I am therefore anxious, that our *Masters* should have one authenticated example of the treatment, which our unhappy country suffers under the sanction of *their* authority; it will put a strong question to their humanity, if they have any, to their prudence, if their pride will let them listen to it; or at least, to that anxiety for reputation, to that pretention to the imaginary virtues of mildness and mercy, to which even those countries the most divested of them, are so ready to assert their claim, and so credulously disposed to believe that claim allowed.

There are some considerations respecting yourselves, and the defendant, to which I should wish to say a word. You perhaps may think your persons unsafe, if you find a verdict as you ought. I know he might send you to the *Provost* as he has done the plaintiff, and forge a return on any writ you might issue for your deliverance—I know there is no spot in this devoted nation (except this on which we now are) where the story of oppression can be told or heard; but I think you can have no well founded apprehensions. There is a time, when cruelty and oppression become satisfied and fatigued; in that satiety at least, you will find yourselves secure. But there is still a better security for you; the gratitude of the worthy defendant—If any thing could add to his honors, and his credit, and his claims, it would be your verdict for the plaintiff; for in what instance have you ever seen any man so effectually accredited and recommended, as by the public execration?—What a man for instance, might not O'Brien have been, if the envy of the gibbet had not arrested the career of his honors and preferments!—In every

ery point of view, therefore, I recommend to you to find, and to find liberally for the plaintiff. I have founded my advice upon the real circumstances of your situation; I have not endeavoured to stimulate you into any silly hectic of fancied liberty—I do not call upon you to expose yourselves by the affectation of vindicating the cause of Freedom and Humanity; much less do I wish to exhibit ourselves to those whose property we are, as indignant or contumacious under their authority—Far from it; they are unquestionably the proprietors of us, they are entitled of right to drive us, and to work us; but we may be permitted modestly to suggest, that for their own sakes, and for their own interests, a line of moderation may be drawn, and that there are excesses of infliction which human nature cannot bear. With respect to her western subjects, England has had the wisdom and humanity to feel the justice of this observation, and in some degree to act upon it; may we hope, that she may think us not undeserving of equal mildness; provided it did not interfere with her just authority over us. It would, I should even think, be for her credit, that having the honour of so industrious a rider, we should be kept in some sort of condition, somewhat bordering upon spirit, which cannot be maintained, if she suffers us to be uttterly broken down by the malicious wantonness of her grooms and jockeys.

Mr. Curran concluded by saying, that the cause was of no inconsiderable expectation, and in whatever light the jury regarded it, whether in respect to the two countries, or to Ireland singly, or the parties concerned, or to their own sense of character and public duty, or to the natural consequences that must flow from the event, they ought to consider it with the most profound attention, before they agreed upon their verdict.

The jury being very loyally inclined, gave to Mr. Hevey by their verdict, for all his insults, losses, and sufferings, *one hundred and fifty pounds!*

*** The Reader, by this time, no doubt, has perceived a difference in Mr. CURRAN's productions—Homer ſometimes nodded, and Milton was not always ſublime; it is not therefore to be expected, that our Orator could always be brilliant — But we can aſſign a more ſubſtantial reaſon for the inequality—Theſe Trials were publiſhed by men of very oppoſite opinions and intereſts, in the heighth of party zeal and animoſity; it may therefore be eaſily imagined, that the Government reporters were not extremely exact in their notes; they or their employers, had purpoſes to ſerve by miſrepreſentation or omiſſion.—We have ſome copies, which, if it were not for the name, we could ſcarcely believe them to be from the ſame man, or ſpoken on the ſame occaſion.——A complete collection of Mr. Curran's works were actually in hands, when the ill-timed, ill-conducted inſurrection of the 23d of July took place in Dublin, † which, by its effects, put down the remains of the Iriſh Preſs, ſent the Printer to jail, put a ſtop to the work, and to every publication touching upon the ſtate of the country, unleſs in favour of the ruling powers — (See p. 318) — In conſequence of which, the Editor has not only been diſappointed in obtaining ſome of Mr. Curran's productions, but alſo in procuring a copper-plate likeneſs of that Gentleman — for theſe diſappointments the Editor reſpectfully begs the indulgence of his friends and the public.

If the Editor had been inclined to practice the *Art of Book-making* (an art well known in Europe) he could, by the help of large types and wide ſpaces, eaſily have made up the promiſed number of pages, and have ſaved to himſelf much labour and expence—But he thought it right to complete the volume with uſeful matter. On examination it will be found to contain a variety of articles connected with the Trials, and neceſſary to the elucidation of the hiſtory and preſent ſtate of Ireland.

Thoſe who wiſh to be better acquainted with the ſtate of Parties in England, Scotland, and Ireland (for the *Diſcontents* do not all belong to the latter country) will read the trials of Muir, Palmer, &c. in Edinburgh, and of H Tooke, Hardy, &c. in London—Let them take the Reports of the Secret Committees of Parliament in one hand, and Nelſon's Statement, O'Conner's Letters, &c. in the other —*Audita utraque parte, judica.*

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† This feeble and abortive attempt produced the worſt conſequences—It leſſened the national character, it depreſſed the ſpirit of the people, ſunk them deeper into ſubjection, and brought to a premature and ignominious death, ſome of their beſt-minded Patriots—amongſt others that amiable and highly promiſing genius, Robert Emmett, Eſq.

MR. O'CONNOR'S ADDRESS
TO
*THE IRISH NATION.**

COUNTRYMEN,

SINCE the conviction and sentence passed on the printer of the PRESS, a clause has been pointed out by the Commissioners of Stamps, which lay lurking in one of the late Parliament's acts, unknown to the lawyers; whereby, a printer convicted of a libel shall be deprived of his property in the paper in which it had been inserted. By this law, in such perfect conformity with all the other acts of a parliament, which in the words of a great and a good man, "has taken more from the liberties, and added more to the burdens of the people," and I may say, stained the Statute book with more penal laws, than any Parliament that ever yet existed; it has become necessary, that on the spur of the instant, from this unforeseen clause, another proprietor should come forward to save the IRISH PRESS from being put down. To perform that sacred office to this best benefactor of mankind, has devolved upon me; and rest assured I will discharge it with fidelity to you and our country, until some one more versed in the business can be procured.

Every engine of force and corruption has been employed by those Ministers, into whose hands, unfortunately for the present peace, and future repose of the nation, unlimited power has been invested, to discover whether I was the proprietor of the Press. Had they sent to me, instead of lavishing your money amongst perjurers, spies, and informers, I would have told them, what I now tell you, that I did set up the Press, though in a legal sense I was not the Proprietor; nor did I look to any remuneration; and I did so, because from the time that, in violation of property, in subversion of even the appearance of respect for the laws, and to destroy not only the Freedom of the Press itself, the present Ministers demolished the *Northern Star*;† no paper in Ireland, either from being bought up, or from the dread and horror of being destroyed, would publish an account of the enormites, which these very Ministers had been committing: where they not only suffered a lawless banditti of sworn extirpators to destroy the property, to rase the habitations, and to drive thousands of ruined families to the most distant parts of the country, for want of protection; but where the strongest suspicions rested, that they had given encouragement to such diabolical acts, under the name of Loyalty, and the mask of Religion; where they let loose an excited soldiery, to commit acts of outrage which no invading army of any country in Europe would have practised, without violating those laws estab-

* This Addreſs ought to have been placed immediately after Finerty's Trial, ſee p. 169. † See p. 133.

established among civilized nations; where the torch had consumed their houses and property in entire districts, and summary murders had been wantonly perpetrated; where thousands have been hurried into those multiplied dungeons, and thousands sent to the gallows on "suspicion of being suspected"* of Reform and Union; and above all, where TORTURE has been applied in numerous instances to extort confession, of what by the Insurrection Act has been judged worthy of death, but as I read it, by the strictest rules and injunctions of Christian morality, has been enforced as a paramount duty. That torture which our ancestors held in such inveterate abhorrence, that its utter exclusion was esteemed so fundamental a part of our constitutional code, that neither that Stuart, nor his ministers whose heads paid the forfeit of the crimes they committed, nor the ministers of that Stuart who was expelled, durst introduce it

I could cite myriads of facts to substantiate the suppresion of the publication of these enormous atrocities; but I will confine myself to the mention of one, which has come within my own knowledge. Whilst I was confined in the tower, the soldiers who were stationed all around it, fired up at the prison; and on being asked why they had fired, without having challenged, or any pretext for so doing, they answered, "that they had acted according to the orders they got." As I was the only person confined in the prison, no doubt could remain that these orders were issued for the purpose of assassination. A gentleman who had been an eye-witness of the attempt, took a statement of facts to the *Evening Post*, which was at that time esteemed the least corrupted paper in Dublin; but the Editor told him that fearing that his house and his press might experience the fate of the *Northern Star*, he would not insert it; although the next day not only that print but every other paper in town, contained an account of the transaction, in which there was not one word of truth, except the admission that the shots had been fired!

From the moment I was enlarged from the tower, I determined to free the Press from this dastardly thraldom; that the conduct of those Ministers might be faithfully published; and whilst a beloved brother is confined in a cell nine feet square,† against every form of law, and the plighted faith of this administration, I take this opportunity to call on Lord Camden to tell you and the world, what enquiry has been made, or what punishment has been inflicted on the perpetrators of an act, which, if brought home to his administration, must affix a greater stain on his name, than the ever memorable days of September have indelibly left on *Robespierre* and his gang of assassins; whose government was supported by burning of hous-

* This phrase originated with Robespierre and his bloody associates, during the days of terror in Paris. † See Roger O'Conner's Letters.

houses, destruction of property, massacring the people, and crowding the galleys and dungeons, but for which he, even *Robespierre*, disdained to employ torture to extort confessions of patriotism, which this sanguinary usurper punished as treason. Whenever it shall happen that one or a few base usurpers shall have seized on a nation's civil and political rights; and that they shall have sold them to a neighbouring country, in the rankest and foulest corruption and treason: whenever it shall happen that to heal religious dissention, to promote universal philanthrophy, true christian charity, and national union; and to establish the imprescriptible right of being represented, which no people can forfeit, shall be punished by legalized murder; trust me, the most drowsy conscience, stung by public exposure, will make every effort by bribery, by violence, by persecution, and by bludgeon and robbery, to put down the Press. —But, regarding it as the great luminary which has dispelled the darkness in which mankind lay brutalized in ignorance, superstition, and slavery—regarding it as that bright constellation, which by its diffusion of light, will, at length, restore the nations to Knowledge and Freedom—whilst, therefore, I can find one single plank of the scattered rights of my Country to stand on, I will fix my eyes on the PRESS, as the polar-star which is to direct us to the haven of FREEDOM.

With these sentiments engraven on my heart; alive to the honest ambition of serving my country; regardless whether I am doomed to fall by the lingering torture of a solitary dungeon, or the blow of the assassin; if the Freedom of the Press is to be destroyed, I shall esteem it a proud destiny to be buried under its ruins: But if there be any men so base or so stupid as to imagine, that they can usurp or withhold your civil and political rights; that they can convert truth into sedition, or patriotism into treason—if they imagine that this is a period favourable for abridging the freedom of mankind, or establishing despotic power on the ruins of Liberty, let them look round them, and they will find, that amongst the old and inveterate despotisms in Europe, some have been destroyed, and that the rest are on the brink of destruction. They may make martyrs, and Liberty's roots will be fertilized by the blood of the murdered; but if their deeds and their blunders have not made reflection a horror, let them look back on the five years that are passed, and they will see, that they have been the most destructively rapid revolutionists that ever existed; they will see that Great Britain and Ireland, from the portion of rights they enjoyed, which were the nations of Europe where revolution was least necessary, and where it might have been most easily saved, are now nearest the danger. But let them reflect ere it is too late, and it is never too late to abandon a ruinous course, that if they could establish without opposition *lettres de cachet* in place of

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Habeas Corpus and Trial by Jury; if the galleys and Bastiles of Despotism could be erected in place of the prisons of law; if they could abolish every idea of representation, and establish chambers of registering their requisitions and edicts; if instead of the Press of the Nation, they could set up the Gazette of the Court; if they could abolish that great constitutional principle, that no man could be forced to his own crimination, and establish the TORTURE to extort confession; * they should recollect, that, like France, instead of preventing a Revolution, they would but create so many powerful causes to excite the people to make one;—and whilst tyrannic despots talk so much of supporting the constitution they have done so much to destroy, let them remember, that if it owes much to obedience, it owes more to resistance; and that the feelings of a people must determine where crimes and sufferings shall end the one, and begin the other. *ARTHUR O'CONNOR.*

* "*Torture to extort confession*"—We have heard much of the tortures practised by certain absolute Governments on their unhappy subjects, and we Protestants have long and justly exclaimed against the tortures of the *Popish Inquisition*—It would be endless to specify all the kinds of tortures lately exercised by a Protestant soldiery, in the name of a Protestant government, upon the unfortunate Irish! — We shall only give one instance from a thousand—the case of the Rev. Mr. O'Niel, parish priest of Ballymacoda in the county of Cork:—

Mr. O'Niel was arrested on suspicion, and condemned by a military court to the torture of whipping, in order to extort a confession—Here follows his own account of the transaction:——

—"Immediately upon my arrest, I was brought to Youghal, where, without any previous examination, I was confined in a loathsome prison called the *Black Hole*, rendered still more offensive by the stench of the common necessary close to it—In that filthy dungeon I remained from Friday till Monday, when I was conducted to the Ball-alley "to receive my punishment."—No trial ever took place — I was stripped and tied up; six soldiers stood forth for the operation, some of them *right-handed*, some of them *left-handed men*—two at a time, as I judge from the quickness of the lashes, and relieved at intervals, until I had received 275 lashes, so vigorously and so deeply inflicted, that my back and the points of my shoulders were quite bared of the flesh! — At that time, a letter was handed to the commanding officer, written in my favour by the Hon. Capt. O'Brien of Rostellan—It only interrupted my punishment—I had not yet "shaken the triangle," † a display of feeling which was expected of me To accelerate that feeling, a *wire cat* was introduced, armed with scraps of tin & lead, as I was afterwards told—whatever were its appendages, I shall never forget its power — In defiance of decency, they cut the waistband of my breeches, for the finishing strokes of this lacerating instrument! — The very first lash, as it renewed all my pangs, shot convulsively thro' my whole frame, made me "shake the triangle indeed"—A second stroke penetrated my loins, and tore them with most excruciating pain—the third again "shook the triangle"—and the *gentlemen* were satisfied!"———

To a common-sense, straight-forward man, such a system does not seem well calculated to persuade the Irish Catholics to adopt the Protestant religion, or succumb quietly to the English government.

† *Triangle*—the three halberts to which the victim is tied.

TO THE READER.

*** This volume is preceded by a *Compendium* of the Hiſtory of IRELAND, tracing it, in a rapid manner, from the earlieſt times, down to the union with England.—The inſertion of Mr. GRATTAN's farewell Addreſs will ſerve two objects: — It will illuſtrate and confirm, from high authority, the ſtatement given in that ſketch; at the ſame time, it will give the American reader a ſpecimen of the literary talents of that admired Orator and incorruptible Patriot.

As a Parliamentary ſpeaker, an *Engliſh* Critic has given the following character of Mr Grattan:——"His voice, tho' not harſh, wants modulation and harmony; ſhrill when it ſhould be full and commanding, and its lower notes weak and ſometimes ſcarcely audible.—In the heat and eagerneſs of debate, he is now too loud, and then too feeble; neither is his action always ſuited to the word, nor the word to the action—There is a great peculiarity in his manner, and he differs from all our modern Orators —Impaſſioned, impetuous, and forcible, he is not a meaſured, ſtudied, made-up ſpeaker — But his language is lofty, magnificent, copious, and original; he is called the *Iriſh Demoſthenes*; he combines ſtrength with beauty, conciſeneſs with ornament, and ſublimity with elegance—Adapted to the exigence of the occaſion, his language is now a wide-ſpreading conflagration, anon a concentrating fire; now abundant and reſplendant, then brief and pointed, equally fitted to inſtruct, delight, or agitate; to ſoothe the ſoul to peace, or to awaken and arouſe all its exalted energies. —With comprehenſive intelligence embracing a great object, not catching at its parts by detail, he takes in the whole at one glance, and ſees inſtantly the pivot whereon it turns with almoſt intuitive acuteneſs. In argument he is ſtrong, pointed, cloſe, and concluſive, never deviating from his ſubject, but explaining with ſucceſs what he underſtands with facility—Every man thinks he could reaſon like Grattan, but they ſoon find it is the bow of Ulyſſes—In the refutation of his opponents, he puts forth all his might, and accumulates his force to overwhelm and oppreſs them; but his ſuperior genius is moſt apparent, when he defends the rights of a Nation, when he pourtrays the hopes, the fears, the wrongs of an injured People—From the impulſe of his oratory, Proſtitution forgets, for a moment, the voice of the Miniſter, and the influence of Penſion and Peerage; all are conſcious of a ſpark of patriotic fire, that, with the rapidity of an electric ſhock, darts from breaſt to breaſt, and, alas, too, with its ſhort-lived duration!"——

Mr. GRATTAN's LETTER

TO

THE CITIZENS OF DUBLIN,

ON HIS DECLINING TO REPRESENT THEM IN PARLIAMENT.

FELLOW CITIZENS,

I THANK you for past favours—I have found in you a kind and a gracious Master—you have found in me an unprofitable Servant;—under that impression I beg to assure you, that so long as the present state of Representation in the Commons House continues, so long must I respectfully decline the honor of soliciting at your hands a seat in that Assembly.

On this principle it was I withdrew from Parliament, together with those with whom I act—and I now exercise my privilege, and discharge my duty in communicating with my Constituents, at the eve of a general election, some say an immediate dissolution, when I am to render back a trust, which, until Parliament shall be reformed, I do not aspire to re-assume.* The account of the most material parts of my conduct, together with the reason of my resolution will be the subject of this letter.

When I speak of my conduct, I mean that adopted in common and in concert with the other Gentlemen. We should have felt ourselves deficient in duty if we had not made one effort before the close of the Parliament, for the restoration of domestic peace, by the only means by which it seemed attainable, *Conciliation*;- and if we had not submitted our opinions, however fallible, and our anxieties, however insignificant, on a subject which in its existence shook your State, and in its consequences must shake the Empire. Our opinion was, that the origin of the evil, the source of the discontent, and the parent of the disturbance was to be traced to an ill-star'd and destructive endeavour, on the part of the Minister of the Crown, to give to the Monarch a power which the Constitution never intended; to render the King in Parliament every thing, and the People nothing, and to work the People completely out of the House of Commons, and in their place to seat and establish the Chief Magistrate absolute and irresistable; it appeared to us, that

* Mr. Grattan did once more appear in the Houſe of Commons, at the laſt debate on the Union, when, in an eloquent and argumentative ſpeech, he entered his ſolemn proteſt againſt the political degradation of his country.

that a Minister guilty of such a crime, is as much a traitor to the Constitution, as the People would be to the King, if they should advance in arms, and place their leader on the Throne—more guilty of treason in equity and justice—because in them it would be only rebellion against their creature, the King—but, in the other, it would be rebellion against his creator, the People. It occured to us, that in this country the offence would be still higher, because in this country, it would be the introduction not only of a despotic, but of a foreign yoke, and the revival of that great question which in 1782 agitated this country, and which, till your Parliament shall be reformed, must agitate this country for ever. We thought no Irishman—we were sure no *honest* Irishman would ever be in heart with Government, so long as the parliament of this country shall be influenced by the Cabinet of England, and were convinced that the people would not be the more reconciled to a foreign yoke, because re-imposed by the help of their own countrymen; as long as they think this to be the case, we were convinced they will hate the Administration, and the Administration will hate them; on this principle we recollected the Parliament of this country pledged their lives and fortunes in 1782—though some seem to have thought better of it since, and are ready to pledge their lives and fortunes against this principle. We could not seriously believe, that the people of Ireland were ready to resist the legislative usurpation of the British Parliament, in whose station the greatness of the tyrant would have qualified the condition of the slave—and that the same people were now ready to prostrate themselves to the legislative usurpation of another body a British Cabinet—a humiliated, and a tame tyrant.—We recollected to have heard, that the friends of Ministry had lamented that England had not acceded to the American claim of exclusive legislature—and afterwards attempted to re-establish British dominion, by *influencing* the American Assembly. We saw the Ministry pursue that very plan toward Ireland which they regretted they had not resorted to in the case of America.

We need not repeat the particulars—but we saw the result to be on the mind of the people a deep-rooted and established discontent and jealousy, and we conceived that whatever conspiracies existed in any extent or degree, proceeded from that original and parent conspiracy in the Minister, to subvert the Parliamentary Constitution by the influence of the Crown. It appeared to us, that the discontent and disturbance so created, was greatly encreased by another cause, the treatment of his Majesty's Catholic subjects. It is the business of the Minister to observe the changes in the national spirit, as much as the changes of foreign combinations;—it was the misfortune of our Ministry that they never attended to those changes; they did

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not perceive that the religious principle and temper, the political, had undergone on the Continent, in America in Ireland, a fundamental alteration; that the example of America had had prodigious effect on Europe; the example and doctrine of Europe, had had no effect on America—they did not see that in consequence of that cause (there were other causes also) the Irish Catholic of 1792 did not bear the smallest resemblance to the Irish Catholic of 1692; that the influence of Pope, Priest, and Pretender were at an end.—Other dangers, and other influences might have arisen—new objects and new passions; the mind of the People is never stationary—the mind of Courts is often stagnant; but those new dangers were to be provided against in a manner very different from the provisions made against the old. Indeed, the continuation of the old system of safety approximated and secured the new danger—unfortunately our Ministers did not think so; they thought—they said, that the Irish Catholic, notwithstanding the American Revolution, nowithstanding the French Revolution, religious as well as political, was still the bigot of the last century—that with respect to him the age had stood still—that he was not impressed with the new spirit of Liberty, but still moped under the old spirit of Bigotry, and ruminated on the triumph of the Cross, the power of Catholic Hierarchy, the riches of the Catholic Clergy, and the splendour of the Catholic Church.—You will find the speeches of the Catholic opponents, particularly the Ministerial declaimers, dream on in this manner, and you will find from the publication of those speeches, and of the Catholics, that the latter had laid aside their prejudices, but that the Ministers had not; and one of the causes why those Ministers alledged that the Catholic mind had not advanced was, that their own mind had stood still—the State was the bigot, and the People the philosopher.

The progress of the human mind in the course of the last 25 years, has been prodigious in Ireland. I remember, when there scarcely appeared a publication in a news-paper of any degree of merit which was not traced to some person of note, on the part of Government or the Opposition; but now a multitude of very powerful publications appear from authors entirely unknown, of profound and spirited investigation. There was a time when all learning in Europe was confined to the Clergy—it then advanced among the higher orders of the Laity, and now it has gone among the People; and when once the powers of intellect are possessed by the great body of the nation, 'tis madness to hope to impose on that nation civil or religious oppression, particularly in those whose understandings have been stationary, though their power and riches have been progressive. The politics of the Castle, with the religious feuds of Ireland, had occupied and engrossed their mind—the eye

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of that mind, or their intellectual vision, had become of course subtle indeed, but extremely little—on the other hand, the politics of Europe and America had occupied the mind of the people; and therefore the mind of the people had become comprehensive—and when the former complained of the press, they complained of the superiority of the popular understanding. It appeared to us, that the best remedy was to raise the understanding of the great by enlarging the sphere of its actions, viz. *Reforming the Parliament*—But to return.—The Ministry however thought proper to persist in hostility to the Catholic body on a false supposition of its bigotry; the consequence of such an attempt was, that the great body of the Catholics, I mean that part the most popular and energetic, disappointed, suspected, reviled and wearied, united with that other great body of the reformers, and formed a Catholic, Presbyterian, and Protestant league, for the freedom of the religion, and the full representation of the people.—Out of this league a new political religion arose, superceding in political matter all influence of priest and parson, and burying theological discord in the love of civil and political liberty. This is at present, in all political matters, the Irish religion—What is the Irish religion?—Unanimity against Despotism. — Viewing the state of the country in this light, it appeared to us, that the unconstitutional influence of the Crown, and the proscription of the Catholics, were the fundamental causes of our discontent and jealousy; with these there existed other discontents distinct from these causes, without these causes insignificant—but with these causes creating great agitation and disturbance. Two remedies occured—coercion and conciliation; we opposed the former, and we proposed the latter.—I will trouble you with our reasons; we considered that the system of coercion would in the first instance destroy the liberty of the people—in the second instance it would subvert the authority and powers of Government.

Here I beg to recur to what I have just observed on the necessity for those who administer a country, to advert to the changes that take place in the temper and understanding of the people. Unfortunately, the Ministry provided, for the purpose of making the people quiet and contented, a system of laws and proclamations, which, had they been quiet before, would have rendered them distracted. I need not repeat them—we all know them—we had the barren office of giving a fruitless opposition—we saw a spirit of reform had gone forth—it had conquered in America—it had conquered in France—both here and in England it existed, and was chiefly nourished and propagated by the abuses of our Government—It appeared to us that the best way of starving that spirit, was to remove its food; far otherwise the proposers of the plan of coercion;—they thought

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it better to feed that spirit, and to cherish the abuses and encrease them—they hoped to fortify their Constitution against an epidemic distemper, by preserving uncured the old gouts and rheumatisms, and a host of other disorders. The power of limited Monarchy was not to be preserved by constitutional power, which is its natural ally; but by despotic power, which is its natural death and dissolution. Instead of correcting the abuses of the State, they invented laws which were themselves an abuse, and proclamations which were an abuse also, and which greatly, though silently, propagated the new principle.

There are two ways by which a new principle spreads—one is by arms—by martyrdom the other. The Mahomedan religion was propagated by arms—it pleased Providence that the Christian religion should have been propagated by the latter. See whether the unfortunate choice of our Ministers has not given to the new principle the benefit of both—they have fled before it abroad, and they have trampled on it at home, and given it the double recommendation of conquest and martyrdom. This consideration was one of my objections to persist in the war with France, on account of Brabant, and it is one of my objections to persist in a war with the Irish on account of venal boroughs. Had the Government instead of aggravating, restrained abuses, they would have put the State at the head of a spirit of Reform, which they could no longer resist, and could only hope to moderate—it was to such a policy adopted by Queen Elizabeth, that the Church of England owes principally what it retains of power and splendour preserved by the Government of the country who took the lead in the Reformation—but our's fell into a different project—they armed *cap-a-pee* against a spirit, which they could not confine by arms abroad, nor by executions at home, and therefore instead of being at the head of popular measures, they were at the tail of them; in the Catholic question, in the Place bill, in the Pension bill, in every bill of a popular tendency—they resisted at first, they yielded at last, reluctantly and imperfectly, and then opposed, condemned, and betrayed the principle of their own acquiescence—they agreed to a Place bill, for instance, and then they multiplied places manifold.—What is the Bar bill, or the bill that creates *thirty* new places for the Gentlemen of the Law?—They agreed to the first Catholic bill, and then proscribed the person of the Catholic, and oppose his freedom in Corporations; they had before agreed to the establishment of the independency of the Irish Parliament, and then had created a multitude of officers to make that indpendency a name.

It is reported to have been said by some of the Ministers of England, that his Majesty's reign has been to Ireland a course of concession, and it was much a subject of wonder that the peo-

people of Ireland should persist in their dissatisfaction.—The answer to those Ministers is obvious, the concessions were extorted from Ministers by the perseverance of Opposition, and they were rendered abortive by the treachery of Ministers.—The recognition of our Parliamentary Rights had been rendered abortive by unexampled exertions of bribery and corruption, the freedom of our trade by debt and war, and the elective privileges of our Catholics by a course of personal persecution, and corporate influence, and on the whole the benefit of Constitutional laws, by the administration of an unconstitutional Government. When the Ministers talk of their concessions to Ireland, do they know the concessions of Ireland to them? do they know the debt of the war?—Continue that rate of expence, and the English wars of the next century will have the same effect as the English prohibition of the last—they will annihilate the trade of Ireland — But to return to the Administration.

They relapsed into their violence when they recovered from their fears, and their system has been therefore occasionally violent and weak, never strong and uniform. It is an observation of Lord Bacon, that the fall of one of the Roman Emperors was due not to his tyranny nor his relaxation, but to both, and that the fluctuating system is ever fatal—'tis an observation of the same, that the way to resist the progress of a new sect, is to correct the abuses of the old ones. Unhappily our Ministers differed from Bacon—their system was faithful to no one principle, either of violence or concession. We objected that it could not now resort to unqualified violence without incuring all the objections belonging to a policy of submission coupled with a policy of violence, and that it could not hope to obtain the advantages appertaining to either. In pursuit of such a system, the Ministry seemed to us to have lost not only their discretion but their temper—they seemed vexed with themselves for being angry—they seemed to become in a passion with themselves, because they had lost their temper with the people—in its struggle with popular rights, the State, like a furious wrestler, lost its breath as well as its dignity—as if an angry father should lose his temper with his child, in which case the old fool is the most incorrigible; in the mean time the enemy seemed to understand our situation perfectly well, and relied on our expences for dissolving our credit, and our intemperance for dissolving our authority; and at the very time when we were precipitating on such measures at home, we were receiving the most melancholy communications from abroad; we saw the Minister retreating from the enemy with as rapid a step as he advanced upon the people, going back and back, and back, while the Democratic principle in Europe was getting on and

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on, like a mist at the heels of the countryman, small at first and lowly, but soon ascending to the hills and overcasting the hemisphere. Like the Government, we wished to provide against this storm; like the Government we wished to disarm the people; as the best means of safety we wished to disarm the people; but it was by the only method by which a free people can be disarmed—we wished to disarm the people of their grievances, and then their other arms, their less dangerous arms, the bayonet, and even the pike, would be retained for no other use but the use of the Government. A naked man oppressed by the State, is an armed host. A few decent Bishops sent to the Tower against law, produced the Revolution. Mr. Hampden and the four other innocent persons arraigned by Cha. I. for high treason, produced the civil war; that grey-coated man, or that green man, sent on board a tender, or detained in prison without trial, he, too, will have his political consequence. —Sensible acts of violence have an epidemic force—they operate by sympathy—they possess the air as it were by certain tender influences, and spread the kindred passion through the whole of the community. No wonder the difficulties have encreased on the Government!—Sad experiment!—to blood the magistracy with the poor man's liberty, and employ the rich like a pack of Government blood-hounds, to hunt down the poor!—Acts of violence like these put an end to all law as well as liberty, or the affectation and appearance of either.

In the course of the session, we asked to what end all this? and accompanied our question by stating the enfeebled resources of the country—we had mentioned at the beginning, that the debt of the war had been about 5,000,000*l*—we were told it was an error—I wish it had been so—but, on examination, that sum appeared somewhat about the debt of the war. And it will appear, if the present loans are filled, that the debt of the war will be near 8,000,000*l*.* We submitted the effects of the war on the resources of the country, and here again it was said we were in error; I wish we had been so; but at what interest does the State borrow money? an interest which between man and man would be usury, and nearly double the former rate. We mentioned the state of the revenue to have declined: again were we contradicted: but what is the fact? what business is now done on the quay?—We did not wish to reveal the *arcana imperii*, we stated nothing more than appeared from the terms proposed in the Gazette, from the returns of your Custom-house, and the printed resolutions touching the state of your manu-

* This debt is now between 20 and 30 millions (see a former note)—and as Pitt is again Prime Minister of England, and Bonaparte is become Emperor of France, the probability is, that it will soon be double the sum.——Such are the effects of war systems, that enrich the few, and impoverish and depress the many.

manufactures: and we stated those public facts, not to damp the public confidence in the defence of the country, but to abate a little of that frantic confidence manifested in a determination, at the hazard of her safety, to go on with a system of domestic coercion, till the Minister should conquer the People—and of foreign war till the same Minster should atchieve another conquest at the risque of general ruin—till he should, sword in hand, recover Brabant: that Minister has found it a more pressing experiment to defend Cork than to take Flanders, as the Emperor has found it a safer experiment to abandon Flanders and Italy to save Vienna. We mentioned those our objections to such folly then, and I repeat them now, not to damp your zeal against a foreign enemy, but to confine the zeal of Government to one enemy, and to deprecate a second enemy—our own people, and a civil war added to a foreign one.

Such was the system of coercion.—To oppose a remedy is easy; to propose one is difficult and anxious; it appeared to us that we should fail in duty and in candour, if, when we resisted the project of Government, we did not submit a plan of our own, and the only plan that appeared to us to promise peace or prosperity was *Conciliation*; we proposed, accordingly, the Emancipation of the Catholics and a Reform in the Commons House of Parliament. To the first it was objected, that such a measure was irreconcilable with the safety of the King or the connexion with England. To the first objection we answered, that the capacites of three-fourths of the people should not be made a personal compliment to his Majesty, and that the pretence for taking away those capacities should not be the religion of his Majesty's allies, of his present subjects of Canada, of his late subjects of Corsica, of a considerable part of his fleet, and of a great part of his army—that the principles that placed his family on the Throne were those of Liberty—and that his Irish subjects if not convicted of felony, were entitled to the benefit of those principles, and that the Catholics have in justice and reason, at least as good a right to Liberty as his Majesty has to the Crown. We observed that the only impediment to the Catholic claim, as the law now stands, was the oath requiring the abjuration of the Virgin Mary, and of the doctrine of the real presence; that to make these points, at such a time as this, matter of alarm to the safety of the King, was to give an air of ridicule to the serious calamities in which those, his Ministers, had involved him. That such opinions, now abstracted from foreign politics, it was beyond the right or the power of the State to settle or punish—that Kings had no right to enter into the tabernacle of the human mind, and hang up there the images of their own orthodoxy; that the Catholics did not insist his Majesty should be of their religion, that his Majesty had

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no right to exact that the Catholics should be of his—*that we knew of no royal rule either for Religion or Mathematics;* and indeed the distance between divine and human nature being infinite, the proportion in that reference between the King and the Subject is lost, and therefore in matters of religion they both are equally dark, and should be equally humble; and when Courts or Kings assume a dictation on that subject, they assume a familiarity with the Almighty, which is excess of blasphemy as well as of blindness. Our contemplation, the most profound on Divine Nature, can only lead us to one great conclusion, our own immeasureable inanity; from whence we should learn, that we can never serve God but in serving his creature; and to think we serve God by a profusion of prayer, when we degrade and proscribe his creature and our fellow-creature, was to suppose Heaven, like the Court of Princes, a region of flattery, and that man can there procure a holy connivance at his inhumanity, on the personal application of luxurious and complimentary devotion. Or, if the argument were to descend from religious to moral study, surely Ministers should have remembered that the Catholics had contributed greatly to the expences of the war, and had bled profusely therein; that they themselves were much in debt to human nature, and should not lose that one opportunity of paying a very small part of it, merely by a restoration of loyal subjects to their own inheritance, "their liberty."

We suggested such a step as a measure of policy as well as justice with a view to the strength and power of his Majesty, who was most improperly made a bar to such a concession.—We suggested that his situation with regard to America—to Europe—to his allies and enemies, was critical; and that it was a mockery of that situation to suppose, that the worship of the V. Mary, or the doctrine of the real presence, constituted any part of the royal difficulties; that there was no spectre to disturb the royal imagination, but an existing substance—a gigantic form walked the earth at this moment, who smote Crowns with a hundred hands, and opened for the seduction of their subjects a hundred arms—DEMOCRACY; and we implored Ministers against such an enemy to ally and identify the King with all his people, without distinction of religion, and not to detach him from any part of them to make a miserable alliance with PRIESTCRAFT, which was a falling cause, and a superannuated folly. With regard to the danger offered to the connexion with England from the emancipation of the Catholics, we observed, that the argument was of a most dangerous and insulting nature, for it amounted to a declaration that the privileges of a vast portion of a nation should *be sacrificed to another country;* that it was not the old internal question, whether

ther the privileges of one part of Ireland should be sacrificed to the ambition of the other, but whether a vast description of the people of Ireland should be sacrificed to England; we observed, that in this part of the argument we need not recur to justice, we might rely on policy; and we asked, was it the policy of England, for the purity of Irish faith, to make experiments on Irish allegiance? We did not wish to exaggerate, but were justified in making this supposition—suppose Ireland the seat of Government, and that for the better securing the safety of the King, here resident, and for the connexion of Great Britain with Ireland, that the Irish should incapacitate all the Protestants of England!—the same affection which England, on that supposition, would afford to the Irish, the same affection she has now a right to expect from Ireland. When England conquered France, possessed America, guided the Councils of Prussia, directed Holland, and intimidated Spain; when she was the great western oracle to which the nations of the earth repaired, from whence to draw eternal truths of policy and freedom—when her root extended from continent to continent, and the dew of the two hemispheres watered her branches—then, indeed, we allowed with less danger, but never with justice, she might have made sacrifices of the claims of the Irish.—We did not mean to press a sense of the change which has taken place in the power of England, further than to prevent further changes more mortifying and decisive, and to impress on Great Britain this important conviction, that as Ireland is necessary to her, so is complete and perfect liberty necessary to Ireland, and that both Islands must be drawn closer by a free Constitution.

The second part of our plan of Conciliation was, *the Reform of Parliament*. The object of the plan was, to restore the House of Commons to the People. If the plan do not accomplish that, it is not the idea of the framers; but no plan could satisfy those persons who wished to retain the credit of Reformers and the influence of Boroughs—no plan could satisfy those who complained when any vestige of Borough influence was continued, that the Parliament was not reformed, and when the vestiges were swept away, that the Constitution was demolished—no plan could satisfy those who desired that the Boroughs should be destroyed and preserved, and were willing to let the People sit in the House of Commons, provided the Aristocracy sat in their lap. It is in favour of the plan submitted, that, without any communication whatever with the other side of the water, it bears a strong and close resemblance to the plan proposed in the Parliament of Great Britain, and in that resemblance carries with it a presumption, that it has a foundation in

common sense and common interest; the objections to it, founded on the presumed antiquity of the Borough system, hardly ventured to make their appearance; examination into the subject had shewn, that the greater part of the Irish Boroughs were creations by the House of Stuart, *for the avowed purpose of modelling and subverting the Parliamentary Constitution of Ireland*; that these were understated when called abuses in the Constitution, that they were gross and monstrous violations, recent and wicked innovations, and the fatal usurpations on the Constitution by Kings, whose family lost the Throne for crimes less deadly to freedom, and who in their Star Chamber tyranny—in their Court of High Commission—in their Ship-money, or in their dispensing power, did not commit an act so diabolical in intention, so mortal in principle, or so radically subversive of the fundamental rights of the realm, as the fabrication of Boroughs, which is the fabrication of a Court Parliament, and the exclusion of a Constisutional Commons, and which is a subversion, not of the fundamental laws, but of the Constitutional Lawgiver—you banish that family for the other acts, and you retain that act by which they have banished the Commons.

It was objected with more success, that the Constitution of Boroughs, however in theory defective, has worked well in fact, but it appeared to us that this was an historic error—we stated in answer to that objection, that the birth of the borough inundation, was the destruction of liberty and property—that James I. the King who made that inundation, by that means destroyed the titles of his Irish subjects to their lands, without the least ceremony—the robbery of his liberty was immediately followed by the robbery of his property; for rely on it, the King that takes liberty, will very soon take away property—he will rob the subject of his liberty by Influence, and then he may plunder him of his property by Statute. There were at that time, the Historian adds, inferior grievances; what were they? martial law and extortion by the soldiers, in levying the King's duties—a criminal jurisdiction exercised by the Castle chamber, and a judicial power by the Council. These inferior and those superior grievances, amounted to no law at all. How could it happen, says the Historian, that the King could do all this with so small an army, seize the properties of the subjects, and transport the inhabitant?—I will presume to conjecture;—the King had another instrument, more subtle and more pliable than the sword—and against the liberty of the subject, more cold and deadly, a Court instrument, that murders Freedom without the mark of blood—palls itself in the covering of the Constitution, and in her own colours, and in her name plants the dagger, *a borough Parliament*:—Under this Borough system, the reign of James was bad, but the next was worse; the grievances

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which England complained of under Charles I. were committed in Ireland also.—Those measures I mean called the new Councils—they had been aggravated here by an attempt to confiscate the province of Connaught; there is extant a correspondence on the subject of Ireland between the King and his Deputy, Lord Strafford, of a most criminal and disgusting nature; his Majesty begins by professing his general horrors of the Constitution—he proceeds to acknowledge his particular injuries to the Irish; he owned that he had defrauded the Irish of their promised graces, he expresses his fears that they have a right in justice to ask what it was his interest, as it appeared to be his determination to refuse. His Deputy—what does he do?—he exceeds his Royal Master in his zeal against the pretensions of Ireland. A judicious Court sycophant will often flatter the Court of St. James, by Irish sacrifice, whether it is the Constitution, or the fair name of the Country. He, the Deputy, had, said the Historian, two great objects—one was to fleece the people of Ireland, the other was to cheat them—to get the money, and to elude the graces. — He succeeded —why?—because there was another, a third instrument, worse than himself—a Borough Parliament—that borough Parliament met—it voted six subsidies, and redressed nothing—this is virtue and public spirit, in comparison to what it did after—after committing these crimes for which the Deputy justly lost his head—after having seized part of the province of Connaught—after the inflicting martial law—monopolies—raising an army against law—and money to pay that army against law—after fining and confining against law—the borough Parliament vote that Deputy an extraordinary supply, and in the preamble of the act they pass on that Deputy an extraordinary panegyric, with such a thorough conviction of his iniquity and their own, that they after impeach that very Minister for those very acts, and record a protestation against the record of their panegyric, to give way to the meanness of another borough Parliament, who, on the return of his family, cancels the record of the protestation to restore the force of the panegyric. Massacre—confusion—civil war—religious fury, followed naturally and of course.—Here you see hatched and matured the egg that produced the massacre, and all that brood of mortal consequences.

The principles of right were rooted out of the land by Government, and they were amazed at anarchy—the barriers against inundation were removed by the Government, and they were astonished to be overwhelmed by a popular torrent; the principles of robbery were planted by the Deputy, and the Government were surprised at the growth of popular pillage—had the country been left to a state of a barbarous nature, she could not have been so shattered and convulsed as when thus reduced

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to a state of barbarous art, where the Government had vitiated that Parliamentary Constitution; it professed to introduce, and had introduced without professing it, Influence not Civilization, had set one order of the nation in feud against the other—had tainted the gentry with the itch of venality, (there was bribery in those days as well as violence) and had given them ideas of vice but not days of refinement. I pass over a hundred and thirty years, a horrid vacuum in your history of borough Parliaments—save only as it has been filled with four horrid images in the four-fold proscription of the Religion, Trade, of the Judicative, and Legislative authority of the country, by the commercial restrictions of William, the penal laws of William and Anne, and the Declaratory Act of 6th George I. And I come to the boundary of the gulph where the Constitution begins to stir and live in an Octennial Bill, accompanied, however, with and corrected by a Court project of new Parliamentary influence and degradation. This project may be called a Court plan for reforming borough Parliaments, but reforming them not on the principle of popular representation, but of a more complete and perfect exclusion and banishment of the Commons—the People had begun to form certain combinations with the Oligarchy, and like weeds began to grow a little about the doors and courts of their own Houses of Parliament, and like weeds it was thought proper to banish them—and as Government had before resorted to the creation of Boroughs to overwhelm the Commons, so now they resorted to a new host of Places and Pensions to overwhelm the Oligarchy. This is the famous half million, or the experiment of the Castle, to secure the dependence of Parliament, and to prevent the formation of an Irish party against the domination of a British Cabinet. The Court could not then like the firstJames and the firstCharles, command to rise up a new fabric of Boroughs, like a regal Pandemonium, to constitute a regal House of Commons; it therefore engendered a young and numerous family of Places and Pensions, to bribe and buy, and to split and shatter, and to corrupt the Oligarchy.

Thus were the people once more excluded from the chance of influence in Parliament, and, as it were, shouldered from the threshold of their own house by a host of Placemen and Pensioners, who had left the cause of the Country to follow the fortunes of Aristocracy, and now left the Aristocracy to follow the fortunes of the Court, and then voted new loans and new taxes to furnish wages for the double apostacy. You had now but little to give up, and that little you surrendered; you gave your provision trade by an embargo of 76 to the contractors, and you surrendered by new loans and taxes, your revenues to the Minister. You accompanied these sacrifices with the unvarying

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felicitations of borough Parliaments, on the virtues of Government, on the great and growing prosperity of your country, and her commerce, which bring the poor progress of the country, your Borough history and that of your Chief Governers, a continuation of rapine, as they have been wittily called, to the catastrophe of 79, which found your State a bankrupt, and your community a beggar, and which induced Parliament to declare that such has been the working of your Borough system, and such the sense of that Parliament respecting it, that nothing but a free trade could save the country from impending ruin. I wish to speak with all honour of the Parliament at that moment, but must recollect the circumstances of that moment. Why did Parliament express itself in that manner at that time, and demand its rights, a short time after?—Because Parliament was at those moments in contact with the people, and it is the object of the Reform that she should continue in contact with the people always, and with the Minister never, except the people should be in contact with him; that Parliament declared that nothing could save this country from impending ruin except a free trade—but in declaring that it declared much more; it protested against these borough Parliaments of a century, who had acquiesced in the loss of a free trade, who had suffered the country to be reduced to that state of impending ruin, for want of that free trade—and who had beheld the approaches of that ruin with a profusion of thanks, and a regular felicitation on the growing prosperity and flourishing commerce of a ruined country—and that Parliament did, by necessary inference, declare, to save the country from returning to that state of ruin—that it was absolutely necessary to reform the state and model of those borough Parliaments—and therefore is an authority for a popular representation, as well as for a free trade—indeed it not only proclaimed the necessity, but constituted it; for in a short time after it gave this country a new political situation, wherein she ceased to be a province, and became a nation, and of course it rendered those borough Parliaments that were adequate to the management of a province, absurd and inapplicable when that province became a Nation.

A Province must be governed with a view to the interest of another country—a Nation, with a view to her own interest—a Borough Parliament was therefore not only competent to govern a province, but the only kind of Parliament fit for the degradation of such a service, and for that very reason it was the most unfit and inadmissible instrument in the government of a nation—for the principle of its birth, being in that case opposite to the principle of its duty—the principle of its birth being Court intrigue, with touched and tainted contractors, and the principle of its duty being the defence of the nation against such in-

intrigue and such contractor—the nature of Parliament being opposed to its duty, or its duty to its parent, being in contradiction with its duty to its country—it follows, that the nation in such a case must be reprovincialized, and the independency supposed to have been then obtained, at that period would have been only a transfer of dependancy from the Parliament of Great Britain to the Court of St. James, in covin and in couple with the borough-brokers of Ireland; therefore the independency of your Parliament, and the full and free representation of your People, are terms synonimous and commensurate.

In opposition to this history and these arguments, submitted in different shapes to the House, in support of Parliamentary Reform, it was replied, that the Borough constitution had worked well at least since 1782—for before no man will contend for it, and that the country had greatly advanced in commerce and tillage; and indeed as far as the plowman and the weaver are concerned, too much cannot be said to justify against every charge of sloth, the character of the Irishman, and to vindicate against a vulgar error, the native energy of a strong, hardy, bold, brave, laborious, warm-hearted, and faithful race of men. —But as far as that boast goes to political measures, we cannot so well express our detestation of them as by recital: the propositions—the new taxes without the trade—the new debt notwithstanding the new taxes—the sale of the Peerage—the surrender of the East India trade for the re-export trade—the refusal of the re-export trade, without such barter—the inequality of the channel trade, and the present provincial tariff suffered still to obtain between the two countries—8,000,000l. of loan voted on account of the war, without commercial compensation, liberality, or equality—the increase of offices, for the professed purposes of procuring a majority—another increase of offices since the place bill—the bar bill—the convention bill—the gunpowder bill—the indemnity bill—the second indemnity bill—the insurection bill—the suspension of the habeas corpus—General Lake's proclamation by order of Government—the approbation afforded to that proclamation—the subsequent proclamations of Government, more military and decisive—the order to the military to act without waiting for the civil power—the imprisonment of the middle orders without law—the detaining them in prison without bringing them to trial—the transporting them without law—burning their houses; burning their villages —murdering them; crimes many of which are public, and many committed which are concealed by the suppression of a free press, by military force—the preventing the legal meetings of counties to petition his Majesty, by orders acknowledged to be given to the military to disperse them; subverting the subject's right to petition—and finally, the introduction of practices not

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only unknown to law, but unknown to civilized and christian countries.

Such has been the working of the Borough system: nor could such measures have taken place but for that system.—Such practices, however, have in part been defended as acts of power, necessary to prevent insurrection, and punish conspiracy. But it appeared to us, that in these practices Government was combating effects, not causes; and that those practices increase these causes, and therefore will increase those effects: that admitting every charge of conspiracy and disaffection in its fullest extent—that conspiracy and disaffection are only effects of that great fundamental cause;—that parent conspiracy formed some years ago, to procure by corruption despotic power. That is the cause, and that cause acts according to the reception of its matter, and the tempers and constitutions to which it applies; and therefore produces on some men disloyalty, in some republicanism, in some the spirit of reform; but in all, deep, great, and growing discontent. That is the cause and the poison which has made some men mad, and all men sick: and though the Government may not be able to restore reason to the mad, or loyalty to the republican, yet if they mean to restore health to the sick, if they mean to restore content and confidence to all, to most, or to any considerable portion of the people, they must take away the poison, they must remove the cause; *they must reform the Parliament.** They have told us at some times, and at other times they have said the contrary, that it is a spirit of plunder, not politics, that is abroad: idle talk—whatever be the crime of the present spirit, it is not the crime of theft—if so, it were easily put down; no, it is a political, not a predatory spirit; it is the spirit of *Political Reformation*, carried to different degrees—to Liberty, in some instances—to Ambition in others—and to Power in others. And even in these cases where charged to be carried to confiscation, it is evident from the charge itself, that confiscation looks to political vengeance, not private plunder; and therefore the best way of laying that spirit, of whatever designs or intents, is to lay the pre-existing spirit of unlawful power and unconstitutional influence, that has frighted the people from Parliament, and has called to our world that other potent and uncircumscribed apparition.

The way to defend your property, is to defend your liberty; and the best method to secure your house against a Defender is to secure the Commons House against a Minister. "There was ambition, there was sedition, there was violence, mixing in the public cause, said Lord Chatham to Mr. Flood, in a private

* They did *reform* the Irish Parliament, by taking it from Ireland entirely.

vate conversation, as he told me, on the civil war between Charles I. and his People. "There was," said he, "ambition —there was sedit on—there was violence—but no man will persuade me that it was not the cause of Liberty on one side, and Tyranny on the other" — So here there may be Conspiracy—there may be Republicanism—there may be a spirit of plunder mixing in the public cause;—but it is a public cause, and let no man persuade you that it is not the cause of Liberty on one side, and Tyranny on the other.—The historian of these melancholy and alarming times, censuring perhaps both the Minister and the Opposition, and censuring us more for our relaxation than violence, will, if a candid man, close the sad account by observing, "that on the whole, the cause of the Irish distraction of 1797, was the conduct of the servants of Government, endeavouring to establish by unlimited bribery, absolute power—that the system of Coercion was a necessary consequence, and part of the system of Corruption, and that the two systems in their success would have established a ruthless and horrid tyranny—tremendous, and intolerable—imposed on the Senate by influence, and the People by arms."—Against such excess of degradation, against any excess whatsoever, we moved the middle, and as we thought the composing and salutary measure, a *Reform of Parliament*, which should give a Constitution to the People, the Catholic emancipation, and which should give a people to the Constitution. We supported that measure by the argument herein advanced, and we defended ourself by such against a deluge of abuse conveyed in the public prints against us on account of that measure—and I restate those arguments, that however the majority of the House of Commons might have been affected, your understanding may not be carried away by such a torent of invective. We urged those considerations —we might have added in our defence the dangers of invasion, and insurrection, panics most likely to incline the Minister to concur in such a measure, which measure seems to be our best, I might say our only defence against those dangers and those panics. We might have added considerations of the immense expence attendant on the working, as it is called, of the Borough Constitution: which expence may be called the prodigality of misrepresentation, or the huge and gigantic profusion which the people supply for turning themselves out of Parliament.

It is well known that the price of boroughs is from 14 to 16,000*l.* and has in the course of not many years increased one-third; a proof at once of the extravagance and audacity of this abuse which thus looks to immortality, and proceeds unawed by the times and uninstructed by example; and, in moments which are held alarming, entertains no fear, conceives no panic, and feels no remorse which prevents the chapman and dealer to

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go on at any risque with his villainous little barter in the very rockings and frownings of the elements, and makes him tremble indeed at liberty, but not at crimes. "Suspend the habeas corpus act — take away the poor man — send the reformer to Newgate—imprison the North; but for the trade of Parliament —for the borough-broker of that trade, don't affect him; give him a gunpowder act, give him a convention bill, give him an insurrection bill, and, having saturated him with the liberty of his country, give him all the plunder of the State." Such is the practical language of that great Noun of Multitude, the *Borough-broker*, demuring on the troubles of the times, which he himself has principally caused, and lying at the door of a Secretary full of sores and exactions. This sum I speak of, this 14 or 16,000*l.* must ultimately be paid by you: it is this increase of the price of boroughs which has produced the increase of the expence of your establishments, and this increase of the expence of your establishment, which has produced this increase for the price of your boroughs; they operate alternately like cause and effect, and have within themselves the double principle of rapid ruin—so that the people pay their members as formerly, but pay them more, and pay them for representing others, not themselves, and giving the public purse full and open, to the Minister, and rendering it back empty to the people—Oh, unthrifty People!—who ever surrendered that invaluable right of paying your own representatives—rely on it, the people must be the prey if they are not the paymasters.

To this public expence we are to add the monstrous and bankrupt waste of private property, becoming now so great that honest men can't afford to come into Parliament; the expence amounts to a child's portion, and the child must be wronged, or the father sold or excluded. Thus, in the Borough Constitution, is private virtue and public set at variance, and men must renounce the service of their Country, or the interest of their Family; from this evil, the loss of private fortune, a much greater loss is likely hereafter to take place, the loss of talent in the public service; for this great expence must in the end work out of Parliament all unstipendiary talent that acts for the people, and supply it by stipendiary talent that acts against them. What man of small fortune, what man of great fortune, can now afford to come into the House of Commons, or sustain the expence of a seat in Parliament, or of a contested election?—and what open place, except in a very few instances, (the city is one of them) where the electors return without cost to their representatives?—I know some who have great talents and have exercised them in the public service, are disposed to decline situations to the honest individual so expensive, and to the public now so unprofitable. To this I am to add a greater evil

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than those already stated, the expenditure of morals. What shall we say for the morals of a country—how many years purchase would you give for her virtue, whose Ministry founded its authority on moral depravity, and formed a league and covenant with an Oligarchy to transfer for hire, virtually and substantially, the powers of legislation to the Cabinet of another kingdom. We inveigh against other combinations—what sort of a combination is this?—This, I know not by what name to approach it, shoots its virus into the heart and marrow of the higher orders of the country. Make your People honest, says the Court—make your Court honest, say the People;—it is the higher classes that introduce corruption—thieving may be learned from poverty—but corruption is learned from riches—it is a venal Court that makes a venal Country—that vice descends from above; the peasant does not go to the Castle for the bribe, but the Castle candidate goes to the peasant—and the Castle candidate offers the bribe to the peasant, because he expects in a much greater bribe to be repaid by the Minister.*

Thus things go on—'tis impossible they can last:—*the trade of Parliament ruins every thing.*—Your Ministers rested their authority entirely on that trade, till now they call in the aid of military power to enforce corruption by the sword—the laws did, in my judgment, afford the Crown sufficient power to administer the country, and preserve the connexion with Great Britain, but our Ministers have despised the ordinary tract, the plain, obvious, legitimate and vulgar bonds between the King and the subject; they have resorted to the guinea and the gallows, as to the only true and faithful friends of Government, and try to hang where they can't corrupt; they have extended the venal stipendiary principle to all constituted authorities; they have given the taint to the grave Corporator as well as the sage Senator, and have gone into the halls and streets to communicate the evil to the middling and orderly part of the society; they have attempted the independency of the Bar. I have great objections to the Bar-bill—and my objections are great in proportion to my regards for the profession, whose signal services to the cause of Liberty must prove to every man's conviction how valuable the acquisition, and how inestimable the loss of that profound and acute profession must be to the cause of a country such as this was formerly, when the rule of government was the law of the land.

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* Happily for the people of America, they do not underſtand the *tricks of Electioneering*, and the *trade of Parliament*. Mr. Grattan moſt emphatically deſcribes this *trade*, formerly carried on in a very extenſive retail manner in the Caſtle of Dublin, and now tranſacted on a grand national wholeſale ſcale in St. James's Palace, London.

We have heard of complaints against systems of disorganization; what is this system?—Is not the corruption of organized bodies their dissolution?—Is not their perversion worse than their dissolution?—What shall we say of the attempts of Ministers on Sheriffs, and the appointment of that Magistrate with a view to Parliamentary influence only—and to the prevention of legal aggregate meetings—and the suppression of the public sentiment.—These things must have an end—this disorganization of constituted authorities by Court influence must have an end. I am not superstitious—but I know that States, like individuals, are punished; it is to prevent their punishment we assayed their reformation; they are punished collectively, and they are punished slowly, but they are punished; where the people are generally or universally corrupt, the society comes to a state of dissolution; where that corruption is confined to those who administer the country, that power must come to a state of dissolution. In order to prevent society from partaking of that corruption and consequence of that corrupt dissolution, it is necessary that the power that administers the country should be brought speedily and radically to a state of reformation—The best systems are not immortal—Are the worst?—Is the trade of Parliament immortal?—Have the best systems perished?—and shall this be impassable and everlasting, infinite in its duration, as it is unbounded in its profligacy. What was the case of Carthage—of Rome—and of the Court of France?—What is the case of the Court of England?—Sitting under the stroke of justice for the American war — paying pains and penalties in augmented burdens and diminished glory; that influence which has depressed her liberty has destroyed her energy, and rendered her as unfit to preserve her empire as her freedom. As long as the battle was between the Court and the Constitution, the former was perfectly equal to subdue her own people; but when she was to combat another people she was unequal to the task, and for the very reason, because she had seduced and debased her own.—The corruption of the Court has rendered England vincible, and has endued her in her present state of national degradation with an insensibility of glory—the result and evidence of mental degeneracy.

I remember to have heard Lord Chatham in one of his speeches on the Middlesex election observe, that in his Ministry the object of the Court of England was the conquest of the French, and that now it was the conquest of Mr. Wilkes. The pursuing such like conquests as those over Mr. Wilkes, has enabled the French to establish a conquest over the English. The King who is advised to conquer the liberty of his subjects, prepares those subjects for a foreign yoke. The Romans were conquered at Cannæ, first by Varro, and afterwards by Hannibal.

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The English have been conquered, first by the Minister, and afterwards by the French. Those Romans were finally conquered by the barbarians of the North, because they had been previously conquered by the Princes of the Empire—and then the half armed savage with the pike and the pole came down on the frontiers, and disposed of the masters of the world as of the stock of the land—the gouty stock of the rich, and the mute stock of the people.

It is now 16 years since the adoption of the project to supply in corruption what the Chief Magistrate lost in prerogative; the loss of thirteen provinces, and of 130,000,000l.—To lose these provinces, the loss of our station in Europe, 130 millions to lose that station—to place the Crown of England as low in Europe as in America—and to put France at the head of Europe, instead of Great Britain, while her people crouch under a load of debt and taxes, without an Empire to console, or a Constitution to cover them, has been the working of that project—it has worked so well as to have worked the people out of their liberty, and his Majesty out of Empire; to leave him as little authority in Europe as his people in Parliament; and to put the King at the feet of France, as the people are put at the feet of the King; public credit has also fallen a victim to this its success, its last great conquest over Liberty and Empire. In this rapid decline, no one Minister has been punished or even questioned; and an Empire and a Constitution have been lost without one penal example; and in a war unparalelled in expence and disgrace, and attended with the grossest and rankest errors, closing the account of blood with proclamations of insolvency—no murmur from the Parliament of either countries—no murmur!—Far from enquiry or complaint, confidence has uniformly attended defeat and dishonour!—The Minister's majorities are become as numerous as his disgraces; and so gigantic have have been his encroachments on the independency of the Constitution, that they can only be matched by the gigantic encroachment of the enemy on the empire. In short, so perfectly do the people appear to be driven out of all footing in the Constitution, that when his Majesty is driven out of almost all footing in Europe, and a question is made by the people, whether the Ministers of these disgraces and dishonours shall be dismissed?—they have their majority at hand to support them!

Against this inundation of evil we interposed Reform; we were convinced of its necessity from the consideration of corruption at home; we were confirmed in that conviction from the consideration of revolutions abroad. We saw the regal power of France destroyed by debts, by expence, and by abuses; we saw the Nobility interpose for those abuses only, to encumber the Throne with their ruins, and to add revolution of

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property to revolution of government; we saw in the American revolution that a people determined to be free cannot be enslaved; that British government was not equal to the task even in plenitude of empire, supported by the different governments of the provinces, and by the sad apostacy of the hapless loyalist; that loyalist is a lesson to the rich and great to stand by their country in all situations—and that in a contest with a remote Court, the first post of safety is to stand by the country, and the second post of safety is to stand by the country, and the third post of safety is to stand by the country; in that American contest we saw that Reform, which had been born in England and banished to America, advancing like the Shepherd Lad in Holy Writ, and overthrow Goliah—He returned riding on the wave of the Atlantic, and his spirit moved on the waters of Europe —The royal ship of France went down—the British man of war labours—your vessel is affected—throw your people overboard, say your Ministers, and ballast with our abuses—throw your abuses over-board, we said, and ballast with your people. We recollected these islands were formerly placed in a sea of Despotism—we saw they were now two kingdoms in a Republican ocean, situated between two great Revolutions, with a certainty of being influenced more or less by one or by both. We asked ourselves, was it possible that the American Revolution could have had such effects on France, and that the American and the French revolutions would have no effect on these countries. The questions that affect the world are decided on the theatre of the world. The great question of popular liberty was fought on the great rivers of Europe and America—it remained to moderate what we could not govern—and what method so safe to moderate popular power as by limited Monarchy? and what method remains to limit the Monarchy of these kingdoms (it has now no limits) as by reforming Parliament? What method, I say, to prevent a *Revolution* but a *Reformation?*—and what is that Reformation of Parliament, but the restoration to the people of Self-legislation, without which there is no liberty, as without Reform no Self-legislation?—So we reasoned. The Government of a country may be placed in the hands of one man, and that one man may reside in another kingdom, and yet the people may be free and satisfied; but to have the Legislature of the country, or what is the same thing, the influencing and directing spirit of the Legislature placed out of the country; to have not only the King but the Legislature an absentee—to have not only the head but the heart disposed of in another country—Such a condition may be a disguised, but it is an unqualified and perfect despotism. Self-legislation is life, and has been fought for, as for being. It was that principle that called forth resistance to the House of Stuart, and

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baptized with royalty the House of Hanover, when the people stood sponsors for their allegiance to the liberty of the subjects; for Kings are but satellites, and your freedom is the luminary that has called them to the skies.

It was with a view therefore, to restore Liberty, and with a view also to secure and immortalize Royalty, by restoring to the people Self-legislation, we proposed Reform — a principle of attraction about which the King and People would spin on quietly and insensibly in regular movements, and in a system common to them both.—" No—no—no—the half million, said the Minister, that is my principle of attraction. Among the rich, I send my half million, and I dispatch my coercion among the people." His Devil went forth—He destroyed Liberty and Property—He consumed the Press—He burned houses and villages —He murdered, and he failed. " Recall your murderer, we said, and in his place dispatch our messenger, try Conciliation —You have declared you wish the People should rebel, to which we answer, God forbid!—Rather let them weary the Royal ear with petitions, and let the Dove be again sent to the King; it may bring back the Olive—and as to you, thou mad Minister! who pour in regiment after regiment to dragoon the Irish, because you have forfeited their affections, we beseech, we supplicate, we admonish, *reconcile the People*—combat Revolution by Reform—let blood be your last experiment."* Combat the Spirit of Democracy by the Spirit of Liberty—the wild Spirit of Democratic Liberty by the regulated Spirit of Organized Liberty, such as may be found in a limited Monarchy, with a free Parliament—but how accomplish that but by reforming the present Parliament, whose narrow and contracted formation in both countries, excludes popular representation—*i. e.* excludes Self-

* In order to ſtrengthen what we have already ſaid, that all Engliſhmen are not abettors of the conduct of their Government, and that there are many illuſtrious exceptions of men who dare to ſpeak the truth in the worſt of times, we give the following paſſage. It is an obſervation made upon the conduct of the Engliſh Governors towards their own ſubjects during the ſanguinary wars ariſing from the French Revolution; a period, conſidering all its various, wonderful, and melancholy circumſtances, not to be paralelled in the hiſtory of the world.

Speaking of the amazing power and reſources of the Engliſh nation in ſupport of theſe wars, he ſays — " But enlightened men were ſhocked at the miſeries inflicted by thoſe who reclined their heads on pillows of down, while their fellow-ſubjects were frequently arreſted on ſuſpicion, confined for months without trial, or tried without crime. It was conſidered as a great outrage, that the puniſhment reſerved for convicted felons ſhould be applied to unconvicted traitors; and Hiſtory has to record, with a bluſh, that ſolitary impriſonment, for the firſt time ſince the Revolution, was practiſed in one country by the expreſs order, and torture inflicted in another, by the tacit permiſſion of Engliſhmen!" —— *Stephens's Hiſtory*, vol. ii. book v. chap. 6.

Self-legislation—*i. e.* excludes Liberty, and whose fatal compliances, the result of that defective representation have caused, or countenanced, or sanctioned, or suffered for a course of years, a succesion of measures which have collected upon us such an accumulation of calamity, and which have finally at an immense expence, and through a sea of blood, stranded these kingdoms on a solitary shore, naked of empire, naked of liberty, and naked of innocence, to ponder on an abyss which has swallowed up one part of their fortunes, and yawns for the remainder.

" May the Kingly power that forms one estate in our Constitution, continue for ever; but let it be, as it professes to be, and as by the principles and laws of these countries, it should be, one estate only—and not a power constiuting one estate, creating another, and influencing a third.

" May the Parliamentary Constitution prosper; but let it be an operative, independent and integral part of the Constitution, advising, confining, and sometimes directing, the Kingly power.

" May the House of Commons flourish; but let the People be the sole author of its existence, as they should be the great object of its care.

" May the connexion with Great Britain continue; but let the result of that connexion be, the perfect freedom, in the fairest and fullest sense, of all descriptions of men, without distinction of religion.

" To this purpose we spoke—and speaking to this to no purpose, withdrew—It now remains to add this supplication:—However it may please the Almighty to dispose of Princes, or of Parliaments—MAY THE LIBERTIES OF THE PEOPLE BE IMMORTAL."

HENRY GRATTAN.

ERRATUM:

☞ In page 26 of the Historical Sketch *for*, In the session of 1799, *read*, In the session of 1800—It was on the 1st of January 1801, that the union of Britain and Ireland took place according to Parliamentary form.

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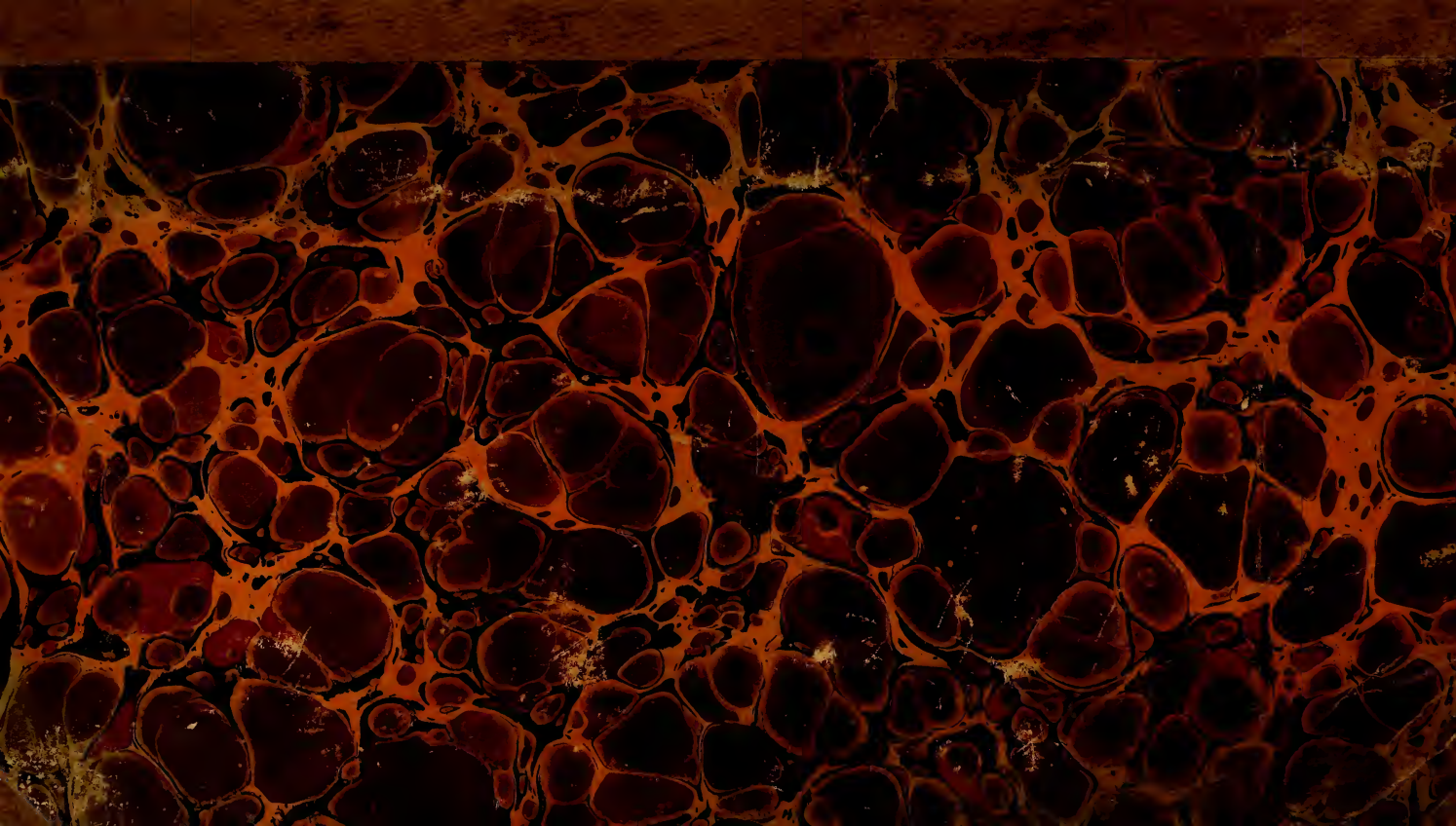
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